COPIES

OF ALL THE

Minutes *and* Proceedings

Taken AT and UPON the

SEVERAL TRYALS

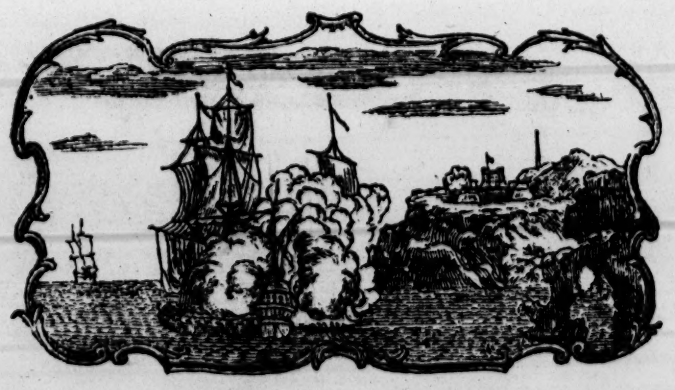
OF

Captain GEORGE BURRISH,
Captain EDMUND WILLIAMS,
Captain JOHN AMBROSE,
Lieutenant HENRY PAGE,
Lieutenant CHARLES DAVIDS,
Lieutenant WILLIAM GRIFFITHS; *And*
Lieutenant CORNELIUS SMELT,

RESPECTIVELY:

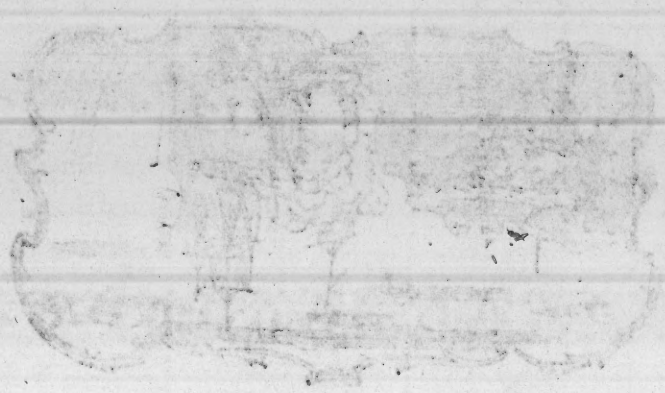
Before the **COURT MARTIAL** lately held at *CHATHAM:*

And all the PROCEEDINGS relating thereunto.



Printed in the YEAR M.DCC.XLVI.

PRESENTED BY



PRINCETON

GENERAL INDEX

TO THE

MINUTES and PROCEEDINGS

OF ALL THE

COURTS

COPY

OF THE

MINUTES

AND

PROCEEDINGS,

Taken AT and UPON the

TRYAL

OF

Lieutenant *Henry Page*, Lieutenant *Charles Davids*, Lieutenant *William Griffith*, and Lieutenant *Cornelius Smelt*, before the Court-Martial lately held at *Chatham* :

And of all the PROCEEDINGS relating thereunto.

PROCEEDINGS

MINUTES
OF THE
PROCEEDINGS
OF A
COURT-MARTIAL,
ASSEMBLED

On Board His MAJESTY's Ship *London*, at *Chatham*, on *Monday*, the 23d *Sept.* 1745.

THE following Officers being aſſembled, took their Places according to their Rank and Seniority; *viz.*

Sir *Chaloner Ogle*, Admiral of the Blue, - - - - - } Preſident.

Perry Mayne, Eſq; Rear-Admiral of the *Blue*,	Capt. *John Orme*,
Capt. *Charles Windham*,	*William Parry*,
James Rentone,	*William Chambers*,
Thomas Frankland,	*Robert Allen*,
Charles Colby,	Sir *Will. Hewett*,
Joſeph Hamar,	*Sheldrake Laton*,
Francis Geary,	Sir *Charles Molloy*,
Geo. Brydges Rodney,	*Smith Callis*,
John Pitman,	*Robert Erſkine*,
Edward Sprague,	*George Elliott*,
Richard Haddock,	*Robert Swanton*,
	Hon. *Arch. Stuart.*

Then the Commiſſion, appointing Sir *Chaloner Ogle* Commander in Chief in the Rivers *Thames* and *Medway*, and at the *Buoy of the Nore*, was read, as follows; *viz.*

By the Commiſſioners for executing the Office of Lord High-Admiral of Great Britain *and* Ireland, *&c.*

To Sir Chaloner Ogle, *Knight, Admiral of the* Blue, *hereby appointed Commander in Chief of his Majeſty's Ships and Veſſels in the Rivers of* Thames *and* Medway, *and at the* Buoy of the Nore.

BY Virtue of the Power and Authority to us given, we do hereby conſtitute and appoint you Commander in Chief of his Majeſty's Ships and Veſſels in the Rivers of *Thames* and *Medway*, and at the *Buoy of the Nore:* Willing and requiring all Captains, Officers and Mariners belonging thereto, to be obedient to your Command, as Commander in Chief; and you likewiſe to follow ſuch Orders and Directions as you ſhall receive from us, or any your ſuperior Officers: For which this ſhall be your Warrant. Given under our Hands, and the Seal of the Office of Admiralty, the 11th Day of *September*, 1745.

Bedford.
Vere Beauclerk.
G. Anſon.
George Grenville.

By Command of their Lordſhips,
Tho. Corbett.

Then the General Warrant to Sir *Chaloner Ogle*, for holding Courts Martial, was read; *viz.*

By the Commiſſioners for executing the Office of Lord High-Admiral of Great Britain *and* Ireland, *&c.*

To Sir Chaloner Ogle, *Knight, Admiral of the* Blue, *and Commander in Chief of his Majeſty's Ships and Veſſels in the Rivers of* Thames *and* Medway, *and at the* Buoy of the Nore.

WHereas, by the Laws and Statutes of this Realm, the Lord High-Admiral of *Great Britain*, or the Commiſſioners for executing the Office of Lord High-Admiral of *Great Britain*, have full Power and Authority to grant Commiſſions to inferior Vice-Admirals, or Commanders in Chief of any Squadron of Ships, to call and aſſemble Courts-Martial, conſiſting of Commanders and Captains, for the Tryal of ſuch Perſons in actual Service and Pay in his Majeſty's Fleets and Ships of War, who ſhall offend againſt any Articles contained in any Act of Parliament made in the Thirteenth Year of the Reign of King *Charles* the Second, intituled, *An Act for Eſtabliſhing Articles and Orders for the Regulating and better Government of his Majeſty's Navies, Ships of War, and Forces by Sea*, or againſt other Acts of Parliament ſince made in that Behalf: We do, therefore, in order thereunto, hereby authorize and impower you to call and aſſemble Courts-Martial, as often as ſhall be neceſſary, conſiſting of Commanders and Captains of his Majeſty's Ships, according as is mentioned in the aforeſaid Act of Parliament

ment of King *Charles* the Second; who are to proceed and inquire into, and examine, all Crimes and Offences committed by any Perſon or Perſons whatſoever againſt the Articles and Orders in the ſaid or other Acts; and to give Sentence upon ſuch Perſon or Perſons, as ſhall be found offending againſt the ſame, either by Pains of Death, or ſuch other Pains and Penalties, as ſhall be thought fit by the ſaid Courts-Martial, according to the true Intent and Meaning of the ſaid Articles and Orders; and to cauſe ſuch Sentences to be duly executed, accordingly; excepting that, while you ſhall be in the Narrow Seas, you do not execute any Sentence of Death, excepting in Caſes of Mutiny: And you are hereby impowered, in the Abſence of the Judge-Advocate of his Majeſty's Fleet, and his Deputy, as often as you call Courts-Martial, to order ſome fitting Perſon to attend thereat, from time to time, for the more orderly Proceeding of the ſame. Given under our Hands, and the Seal of the Office of Admiralty, the 11th *September*, 1745.

Bedford.
By Command of their Lordſhips, *Vere Beauclerk.*
G. Anſon.
Tho. Corbett. *George Grenville.*

Then the Warrant to Sir *Chaloner Ogle*, for holding this particular Court-Martial, was read, as follows; *viz.*

By the Commiſſioners for executing the Office of Lord High-Admiral of Great Britain *and* Ireland, *&c.*

WHereas his Grace the Duke of *Newcaſtle*, his Majeſty's Principal Secretary of State, did tranſmit to us, with his Letter of the 20th *April* laſt, a Copy of an Addreſs of the Honourable Houſe of Commons, of the 11th of that Month, as follows; *viz.*

" *Reſolved*,

" That an humble Addreſs be preſented to " his Majeſty, that he will be graciouſly pleaſed " to give Directions, that Courts-Martial may " be held, in the moſt ſpeedy and ſolemn Man- " ner, to inquire into the Conduct of Admiral " *Mathews*, Vice-Admiral *Leſtock*, Captain " *Burriſh*, Captain *Richard Norris*, Captain " *Williams*, Captain *Ambroſe*, Captain *Frog-* " *more*, Captain *Dilke*, in and relating to the " late Engagement between his Majeſty's Fleet " and the Combined Fleets of *France* and " *Spain* off *Toulon*; and of the Lieutenants of " his Majeſty's Ship *The Dorſetſhire*, then " aboard; and of all other Officers, who are " or ſhall be charged with any Miſconduct in " that Action; and to try them for the ſame: " And that his Majeſty would be pleaſed to ap- " point a proper Perſon or Perſons, to collect " all the Evidence neceſſary for the Tryals of " the ſaid ſeveral Commanders and Officers, " and to proſecute them effectually, in order " to bring thoſe to condign Puniſhment, thro' " whoſe Miſconduct it ſhall be found, that " ſuch Diſcredit has been brought upon his " Majeſty's Arms, the Honour of the Na- " tion ſacrificed, and ſuch an Opportunity loſt " of doing the moſt important Service to the " common Cauſe."

And his Grace having, at the ſame time, ſignified to us his Majeſty's Pleaſure, That we ſhould give the neceſſary Orders for complying with what is deſired by the ſaid Addreſs, we did, in purſuance of his Majeſty's Pleaſure ſo ſignified to us, appoint *John Sharpe*, Eſq; and Mr. *Philip Creſpigny*, to collect all the Evidence neceſſary for the Tryals of the ſaid ſeveral Commanders and Officers; and to proſecute them effectually: And they have been accordingly employed in preparing the Charges, and collecting the Evidence againſt all the aforeſaid Perſons mentioned in the Addreſs of the Houſe of Commons (excepting Captain *Frogmore*, who it is ſince heard is dead); and alſo againſt Captain *Weſt*, Captain *Sclater*, and Captain *Pett* (who, together with Captain *Cooper* and Captain *Lloyd*, ſtill remaining in the *Mediterranean*), have been ſince charged by Mr. *Leſtock* with Miſconduct in the ſaid Action. And whereas Mr. *Sharpe* and Mr. *Creſpigny*, the Proſecutors on this Occaſion in behalf of the Crown, have prepared the ſeveral Charges againſt Admiral *Mathews*, Vice-Admiral *Leſtock*, Captain *Burriſh*, Captain *Williams*, Captain *Ambroſe*, Captain *Dilke*, Captain *Weſt*, Captain *Pett*, and Captain *Sclater*; and againſt Lieutenants *Page*, *Davids*, *Griffiths*, and *Smelt*, the Lieutenants of the *Dorſetſhire*, then aboard; and have acquainted us, That they ſhall have collected all the Evidence neceſſary to ſupport the ſaid Charges, by the 23d of this Month: And ſeveral of the Officers who are to be tried, having expreſſed their Deſire to have their Tryals brought on as ſoon as poſſible, we have fixed upon the ſaid 23d Day of this Month, for aſſembling a Court-Martial to go upon the Tryals of the ſaid Officers: And whereas, by our Commiſſion of this Date, we have appointed you Commander in Chief of his Majeſty's Ships and Veſſels in the Rivers of *Thames* and *Medway*, and at the *Buoy of the Nore*; and have authorized you, by our general Power, of the ſame Date, to call and aſſemble Courts-Martial, you are hereby required and directed to aſſemble a Court-Martial accordingly, on board his Majeſty's Ship the *London*, at *Chatham*, upon the aforeſaid 23d Day of this Month, who are to proceed to inquire into the Conduct of Admiral *Mathews*, Vice-Admiral *Leſtock*, Captain *Burriſh*, Captain *Williams*, Captain *Ambroſe*, Captain *Dilke*, Captain *Weſt*, Captain *Pett*, and Captain *Sclater*; and alſo of the Lieutenants *Page*, *Davids*, *Griffiths*, and *Smelt*, who were Lieutenants of the *Dorſetſhire*, in and relating to the ſaid late Engagement between his Majeſty's Fleet and the Combined Fleets of *France* and *Spain* off *Toulon*,

and to try them for the ſame, upon ſuch Charges as the Proſecutors for the Crown have prepared againſt them; and which will be laid before the Court, by the Judge-Advocate of his Majeſty's Fleet, whom we have directed to attend thereat: And, in the Tryals of the ſaid Officers, you are to begin firſt with the Lieutenants; then go on with the Captains; and, laſtly, with the Flag-Officers. Given under our Hands the 11th *September*, 1745.

To Sir Chaloner Ogle, *Knt. Admiral of the Blue, and Commander in Chief of his Majeſty's Ships and Veſſels in the Rivers* Thames *and* Medway, *and at the* Buoy of the Nore.

Bedford.
Vere Beauclerk.
G. Anſon.
George Greenville.
H. Legge.

By Command of their Lordſhips,
Tho. Corbett.

The Members of the Court were ſworn.

Then the Warrants, by which Mr. *Sharpe* and Mr. *Creſpigny* were appointed Proſecutors for the Crown, were read, as follows; *viz.*

By the Commiſſioners for executing the Office of Lord High-Admiral of Great-Britain *and* Ireland, *&c.*

To John Sharpe, *Eſq*;

WHereas, in purſuance of an Addreſs of the Houſe of Commons to his Majeſty, That he will be graciouſly pleaſed to give Directions, That Courts-Martial may be held, in the moſt ſpeedy and ſolemn Manner, to inquire into the Conduct of Admiral *Mathews*, Vice-Admiral *Leſtock*, Captain *Burriſh*, Captain *Richard Norris*, Captain *Williams*, Captain *Ambroſe*, Captain *Frogmere*, Captain *Dilke*, in and relating to the late Engagement between his Majeſty's Fleet and the Combined Fleets of *France* and *Spain*, off *Toulon*; and of the Lieutenants of his Majeſty's Ship the *Dorſetſhire*, then aboard; and of all other Officers who are or ſhall be charged with any Miſconduct in that Action; and to try them for the ſame: And that his Majeſty would be pleaſed to appoint a proper Perſon or Perſons to collect all the Evidence neceſſary for the Tryals of the ſaid ſeveral Commanders and Officers; and to proſecute them effectually, in order to bring thoſe to condign Puniſhment, through whoſe Miſconduct it ſhall be found, that ſuch Diſcredit has been brought upon his Majeſty's Arms; the Honour of the Nation ſacrificed; and ſuch an Opportunity loſt of doing the moſt important Service to the common Cauſe: His Grace the Duke of *Newcaſtle* has ſignified to us his Majeſty's Pleaſure, That we ſhould give the neceſſary Orders for complying with what is deſired by the ſaid Addreſs: We do therefore, in purſuance of his Majeſty's Pleaſure, hereby authorize, conſtitute and appoint you to collect all the Evidence neceſſary for the Tryals of the aforeſaid ſeveral Commanders and Officers, and to proſecute them effectually, agreeable to the ſaid Addreſs of the Houſe of Commons: For which This ſhall be your Warrant. Given under our Hands, and the Seal of the Office of Admiralty, this 8th Day of *May*, 1745.

Bedford.
Sandwich.
A. Hamilton.
George Grenville.
H. Legge.

By Command of their Lordſhips,
Tho. Corbett.

By the Commiſſioners for executing the Office of Lord High-Admiral of Great Britain *and* Ireland, *&c.*

To Mr. Philip Creſpigny.

WHereas, in purſuance of an Addreſs of the Houſe of Commons to his Majeſty, That he will be graciouſly pleaſed to give Directions, That Courts-Martial may be held in the moſt ſpeedy and ſolemn Manner, to inquire into the Conduct of Admiral *Mathews*, Vice-Admiral *Leſtock*, Captain *Burriſh*, Captain *Richard Norris*, Captain *Williams*, Captain *Ambroſe*, Captain *Frogmere*, Captain *Dilke*, in and relating to the late Engagement between his Majeſty's Fleet and the Combined Fleets of *France* and *Spain*, off *Toulon*; and of the Lieutenants of his Majeſty's Ship *The Dorſetſhire*, then aboard; and of all other Officers who are or ſhall be charged with any Miſconduct in that Action; and to try them for the ſame: And that his Majeſty would be pleaſed to appoint a proper Perſon or Perſons to collect all the Evidence neceſſary for the Tryals of the ſaid ſeveral Commanders and Officers, and to proſecute them effectually, in order to bring thoſe to condign Puniſhment, through whoſe Miſconduct it ſhall be found, that ſuch Diſcredit has been brought upon his Majeſty's Arms; the Honour of the Nation ſacrificed; and ſuch an Opportunity loſt of doing the moſt important Service to the common Cauſe: His Grace the Duke of *Newcaſtle* has ſignified to us his Majeſty's Pleaſure, That we ſhould give the neceſſary Orders for complying with what is deſired by the ſaid Addreſs: We do therefore, in purſuance of his Majeſty's Pleaſure, hereby authorize, conſtitute and appoint you, in Conjunction with *John Sharpe*, Eſq; to collect all the Evidence neceſſary for the Tryals of the aforeſaid ſeveral Commanders and Officers, and to proſecute them effectually, agreeable to the ſaid Addreſs of the Houſe of Commons: For which This ſhall be your Warrant. Given under our Hands, and the Seal of the Office of Admiralty, this 7th Day of *June* 1745.

Sandwich.
A. Hamilton.
Vere Beauclerk.
G. Anſon.
George Grenville.

By Command of their Lordſhips,
Tho. Corbett.

And then the Judge-Advocate repreſented to the Court, That thoſe Two Gentlemen were

deſirous to know, In what Manner, as Proſecutors for the Crown, they were to be conſidered by the Court: Upon which the Audience were ordered to withdraw; and Mr. *Sharpe* and Mr. *Creſpigny* were heard what they had to offer: And then they withdrew alſo.

The Court then conſidered this Matter; and, after deliberating ſome time thereupon, agreed, That the following Queſtion ſhould be put: Which was accordingly done; *viz.*

Is it the Opinion of the Court, That the Proſecutors for the Crown be allowed a Side-Table to ſit at, in the Court, during the Examinations of the Witneſſes, in order to hear what paſſes? And, in caſe they ſhall think (after the Court ſhall have gone through the Examination of any particular Witneſs), that any material Queſtion ſhall not have been aſked by the Court, that they be allowed to deliver, in Writing, to the Judge-Advocate, in order to be laid before the Court, ſuch further Queſtions, as may appear to them to be neceſſary, in Support of the Proſecutions?

And the Court unanimouſly agreed in the Affirmative: And then Mr. *Sharpe* and Mr. *Creſpigny* were called in; and acquainted with the Reſolution of the Court.

The Wind blowing very freſh, and it appearing, that the Yacht, which the Preſident had ſent down to the *Nore* for the Priſoners, is thereby hindered from bringing them up;

The Court adjourned till To-morrow Morning, Eight of the Clock.

TUESDAY, 24th *September*, 1745.

THE Court met according to Adjourment, all the Members being preſent, who met Yeſterday: And *Thomas Smith*, Eſq; coming alſo to the Court, was ſworn, and took his Place.

Then the Four Lieutenants of the *Dorſetſhire* were brought in by the Marſhal.

The Charge againſt them was read, as follows; *viz.*

Charge againſt Henry Page, Charles Davids, William Griffith, *and* Cornelius Smelt, *late Lieutenants of his Majeſty's Ship* Dorſhetſhire.

1ſt, THAT, on the Eleventh Day of *February* One thouſand Seven hundred and Forty-three, *Thomas Mathews*, Eſq; was Admiral and Commander in Chief of his Majeſty's Fleet in the *Mediterranean* Sea; and *George Burriſh*, Eſq; being then and there Captain and Commander of his Majeſty's Ship *Dorſetſhire*, and under the Command, and in the Diviſion, of the ſaid Admiral; and the ſaid *Henry Page*, *Charles Davids*, *William Griffith*, and *Cornelius Smelt*, being then and there Lieutenants of the ſaid Ship *Dorſetſhire*; and the ſaid *Thomas Mathews* being in Sight and View of the Combined Fleets of the King of *Spain*, his Majeſty's then declared Enemy, and the *French* King, his Ally and Confederate; and the ſaid Combined Fleets being very near, and in Likelihood of an Engagement with his Majeſty's ſaid Fleet, the ſaid *Thomas Mathews* did cauſe the proper Signal to be made to engage; and then and there, with ſeveral of his Majeſty's Ships under his Command, did bear down upon, engage, and join Battle with his Majeſty's ſaid Enemies, and endeavour to take, fire, kill, and endamage the ſaid Enemy: And that the ſaid *George Burriſh*, then having the Command of the ſaid Ship *Dorſetſhire*, and in full Sight and View of the ſaid Engagement; and the ſaid *Henry Page*, *Charles Davids*, *William Griffith*, and *Cornelius Smelt*, being Lieutenants and Officers of the ſaid Ship, the ſaid Admiral *Mathews* ſent Two ſeveral Orders or Commands to the ſaid *George Burriſh*, to bear down, and engage the Enemy in his Station; which he might, and ought to have done: That the ſaid *Henry Page*, *Charles Davids*, *William Griffith*, and *Cornelius Smelt*, the ſaid Lieutenants of the ſaid Ship *Dorſetſhire*, being acquainted by the ſaid *George Burriſh* with the Orders and Commands of the ſaid Admiral *Mathews*, to bear down upon, and engage the Enemy in his Station, as aforeſaid; yet they the ſaid *Henry Page*, *Charles Davids*, *William Griffith*, and *Cornelius Smelt*, agreed to, and did adviſe the ſaid Captain *Burriſh*, not to bear down upon, and engage the ſaid Enemy, purſuant to the ſaid Orders and Commands of the Admiral, as aforeſaid; contrary to their Duty as Officers in his Majeſty's Service, and thereby putting back or diſcouraging the ſaid Service, and withdrawing or keeping back from the Fight, contrary to the Articles of War, and to the Danger of the Loſs of his Majeſty's Ships of War, then engaged with his Majeſty's ſaid Enemies, and in their Sight and View in Diſtreſs.

2d, That the ſaid *Henry Page*, *Charles Davids*, *William Griffith*, and *Cornelius Smelt*, were, and are guilty of Neglect of Naval Military Diſcipline, and of divers notorious Breaches of their Duty, as Officers and Lieutenants of his Majeſty's ſaid Ship of War the *Dorſetſhire*, upon the ſaid Eleventh Day of *February*, during the ſaid Engagement of his Majeſty's ſaid Fleet with the ſaid Combined Fleets of *France* and *Spain*, in the *Mediterranean* Sea.

And then the Witneſſes, in Support of the Charge, were ordered to be called in.

Captain *Bentley*, late Lieutenant of the *Namur*, called in, and ſworn.

His Depoſition (made the Fifth *September*, 1745, before the Judge-Advocate) was read, *viz.*

Captain John Bentley, *late a Lieutenant of his Majeſty's Ship the* Namur *(the Ship on board which Admiral* Mathews *hoiſted his Flag), at the Time of the late Engagement between his Majeſty's Fleet and the Combined Fleet of* France *and* Spain, *off of* Toulon, *in the* Mediterranean *Sea, on the* 11*th Day of* February, 1743, *maketh Oath*;

THAT, on the Eleventh of the ſaid Month of *February*, in the Morning, his Majeſty's Fleet, under the Command of Admiral *Mathews*, being in Sight of the Combined Fleets of *France* and *Spain*, the ſaid Admiral made a Signal for the Line of Battle abreaſt: That about Eleven o'Clock the Enemies Fleet was about Three or Four Miles diſtant from the Centre of his Majeſty's Fleet, and were then in a Line of Battle; and about that Time, the Admiral made the Signal to engage: That between Twelve and One o'Clock, Admiral *Mathews*'s Diviſion being then, to the beſt of his Remembrance, pretty well formed in a Line of Battle a-head, and about Two Miles diſtant from the Enemy, the Admiral bore down with the *Namur* and *Marlborough* (but what other Ships he cannot be poſitive), and began to engage the *Real*, the *Spaniſh* Admiral, about One o'Clock: That the *Marlborough* was diſabled by loſing her Main and Mizen Maſts about Three o'Clock: Soon after which, this Deponent was ſent by the Admiral to the *Dorſetſhire* (which then lay on the *Marlborough*'s Weather-Quarter; and, in his Opinion, out of point-blank Shot of the *Real*, and was not then engaged with any Ship of the Enemy), with Orders for her Commander to bear down and aſſiſt the *Marlborough*, and to ſtop the Four *Spaniſh* Ships aſtern from coming up: That he delivered the Admiral's Meſſage to Captain *Burriſh*, upon the *Dorſetſhire*'s Quarter-Deck; and was anſwered by Captain *Burriſh*, That he would do ſo (or Words to that Effect): And he thinks he heard Captain *Burriſh* immediately give Orders for the Helm to be put a-weather, the Foreſail to be let fall, and the Top-Gallant Sails to be hoiſted: But, to the beſt of this Deponent's Recollection, upon ſomebody ſpeaking to Captain *Burriſh*, he ſaid to this Deponent, Stay a little; we are filling Powder, or going to fill Powder (or Words to that Effect; I will make all the Diſpatch I can, and bear down immediately: Upon which, this Deponent put off; and, juſt after he had done ſo, Captain *Burriſh* ſaid ſomething through a Speaking-Trumpet; but what it was, this Deponent could not diſtinguiſh: But immediately afterwards, he ſaw the *Dorſetſhire* bear down, and engage with the Enemy, but with what Ship he does not know; and believes ſhe was then within point-blank Shot; the Enemies Shot going over the Boat (in which he was returning to the *Namur*), when ſhe was conſiderably to Windward of the *Dorſetſhire*: That this Deponent is doubtful, whether he was once or twice ſent to the *Dorſetſhire*; but, if he went to her a Second time, what paſſed about filling Powder, he thinks, muſt have been upon the Second Meſſage.

And he declared the ſame to be true.

Q. Was the *Dorſetſhire* in the Line of Battle?

A. She was a little upon the *Marlborough*'s Larboard-Quarter, and a little to Windward of the Line.

The Court aſking ſome Queſtions about the Proceedings of the *Dorſetſhire*, the Judge-Advocate obſerved to the Court, That Captain *Bentley* was called in upon this Tryal, only to prove his carrying a Meſſage from the Admiral to the *Dorſetſhire*; and what that Meſſage was: And that he would be called in again as a Witneſs upon Captain *Burriſh*'s Tryal.

Q. Did you ſee the Lieutenants of the *Dorſetſhire* on the Quarter-Deck when you carried the Meſſage? Or did you hear any thing that paſſed between them and Captain *Burriſh*?

A. I can't tell whether I ſaw the Lieutenants on the Quarter-Deck; nor do I know what paſſed between them and Captain *Burriſh*.

Then he withdrew.

Captain *Cole* of Marines, on board the *Dorſetſhire*, called in, and ſworn.

Such Part of his Affidavit (made the 23d *Auguſt*, 1745, before the Judge-Advocate), as relates to the Admiral's Meſſages to the *Dorſetſhire*, and to a Conſultation between Captain *Burriſh* and his Lieutenants thereupon, was read, as follows; *viz.*

" THAT, after the Admiral had engaged " ſome time, he ſhot ahead; and, ſoon " after, ſent a Lieutenant on board the *Dor-* " *ſetſhire*, with a Meſſage to Captain *Burriſh*; " but what it was, this Deponent cannot ſay; " but he thinks Captain *Burriſh* ſaid ſomething " in Anſwer thereto, about Powder not being " filled: But ſoon afterwards, Captain *Burriſh* " was called to, from a Boat which was along- " ſide, with a Second Meſſage from the Ad- " miral: That, upon one of the ſaid Meſſages, " but which of them he cannot ſay, Captain " *Burriſh* called his Lieutenants upon the Quar- " ter-Deck, about Two o'Clock in the After- " noon; and told them, As he found the Ships " aſtern were not willing to keep the Four *Spaniſh* " Ships aſtern from coming up, and as the Ad- " miral had ſent him Orders to bear down, he " aſked them, Whether it was their Opinion, " that he ſhould go down, or not; for, he ad- " ded, That he was of Opinion, the Four *Spa-* " *niſh* Ships aſtern would get the Weather- " Gage of him; and that then both himſelf and

" the

" the *Marlborough* would be taken, as none of " the Ships aſtern he found would aſſiſt him: " Upon which, they all Four agreed with the " Captain in the ſame Opinion; and thereupon, " the Captain did not bear down, and aſſiſt the " *Marlborough*, or engage the *Real*: That, at " the Time this Conſultation happened between " the Captain and his Lieutenants, the ſtern-" moſt Ships of the Enemy were about Four or " Five Miles aſtern of the *Dorſetſhire*."

And he declared the ſame to be true.

Q. Was you by, when Captain *Bentley* brought the Meſſage to Captain *Burriſh*?

A. I heard Captain *Burriſh* ſay, A Meſſage was ſent on board for him to aſſiſt the *Marlborough*: And he was angry, that Admiral *Leſtock*'s Diviſion did not bear down; and thought it moſt adviſeable to keep his Station.

Q. How far was you from the *Marlborough*?

A. About as far as ſhe was from the *Real*.

Q. Did you hear Lieutenant *Smelt* adviſe Captain *Burriſh*, not to bear down?—[*This was aſked at Mr.* Smelt's *Deſire*].

A. I am not ſure: But I heard the eldeſt Lieutenant ſay ſo; and *Smelt* ſaid nothing to the contrary.

Q. What did Lieutenant *Page* ſay to Captain *Burriſh*?—[*Lieutenant* Page *deſired this to be aſked*].

A. The Captain told the Lieutenants, He thought it adviſeable to keep his Station, and not bear down: And the Firſt and Second Lieutenants agreed, that it was adviſeable ſo to do; but I cannot be poſitive as to the other Two.

Lieutenant *Page* offered a Certificate from Captain *Burriſh*, in order to prove the contrary; and deſired it might be read: But it was laid by; and the Court went on with the Examination of the Witneſs.

Q. Which of the Lieutenants did you hear adviſe the Captain not to bear down?

A. I heard *Page* and *Davids*.

Q. In what Part of the Ship was you at that Time?

A. I was on the Quarter-deck, very near the Captain and Lieutenants; and ſaw all the Lieutenants there.

Q. Were they all Four together?

A. Yes.

Q. Do you believe they all conſented not to bear down?

A. I believe ſo: They complied with the Captain, and thought it adviſeable not to bear down.—I am poſitive Two ſaid ſo.

Q. About what Time of the Day was it?

A. About Two o'Clock in the Afternoon—This was aſked at a Conſultation of the Lieutenants; and I don't know, but they were all on the Quarter-deck.

Q. Were they near enough to you to be heard?

A. Yes.

Then he withdrew: And there being no other Witneſſes in Support of the Charge, the Priſoners were aſked, What they had to offer in their Defence? They acquainted the Court, That they had ſeveral Witneſſes, who they deſired might be called in.

Lieutenant *Short*, of Marines, on board the *Dorſetſhire*, called in, and ſworn.

Such Part of his Depoſition (made 24th of *Auguſt*, 1745, before the Judge-Advocate) as relates what paſſed between Captain *Burriſh* and his Lieutenants, when they were called to him upon the Quarter-deck, was read, as follows; *viz.*

" THAT the *Marlborough* loſt her Main " and Mizen-maſts, about Two Hours " after ſhe began to engage: And that about " Three o'Clock the Admiral's Lieutenant (he " thinks Mr. *Bentley*) came on board the *Dor-" ſetſhire*; and told Captain *Burriſh*, on the " Quarter-deck, That the Admiral deſired he " would go and aſſiſt, or relieve the *Marlbo-" rough*. That about the ſame Time (to the " beſt of this Deponent's Remembrance) Cap-" tain *Burriſh* ſent for his Sea-Lieutenants on " the Quarter-deck, and ſhewed them the Po-" ſition of the Admiral's Diviſion that were " to Windward and aſtern of the *Dorſetſhire*, " and the Poſition of the Enemy; and ſaid, " You ſee our Ships keep to Windward, and " there are the Enemies Ships: I am going " down; and if our Ships ſhould not come " down, and I ſhould be obliged to haul off " again, I ſend for you, that you might know " the Reaſon of my doing ſo (or to that Ef-" fect): That one of the Lieutenants (but " which he does not remember) ſaid, That " There would be Time enough for that: That " he believes all the Four Lieutenants were " then preſent; but is poſitive as to Lieute-" nants *Davids*, *Griffith*, and *Smelt*: And he " then underſtood, it was the Opinion of " the Lieutenants to bear down: That ſhortly " afterwards, the *Dorſetſhire* bore down near " the *Real*, and fired at her for ſome time."

And he declared the ſame to be true.

Q. Did you engage the *Real*?

A. We bore down, and fired upon a Ship, which I took to be the *Real*.

Q. How near did you bear down?

A. Within Gun-ſhot, as I believe.

Q. Did you hear Captain *Burriſh* ſpeak to the Lieutenants? And did he ſhew them the Poſition of the Enemy?

A. Yes.

Q. What Reply did the Lieutenants make?

A. They ſaid, it was Time enough, if they bore down, to haul off again, as I underſtood.

Q. Did you hear the Lieutenants adviſe the Captain not to bear down?

A. No.

Q. Where was you at that Time?

A. On

A. On the Quarter-deck, cloſe to the Lieutenants—I ſaw Three of them; and believe they were all there.

Q. Did you ever obſerve the Lieutenants diſobey the Captain's Command?

A. No.

Q. Did you ſee any Unwillingneſs in the Liutenants to bear down?

A. No: They ſaid it would be Time enough; and went to their Duty.

Q. Did the Lieutenants ſay, The Captain was wrong in not bearing down?

A. I don't remember that.

Q. Can you ſay any thing as to the Bravery of the Lieutenants?

A. I can't ſay any thing more than I have already ſaid.

Q. Did they encourage the Men?

A. I don't know: I was on the Quarter-deck.

Q. Do you know that the Captain ſent for the Lieutenants?

A. I believe ſo—The Captain did ſend for them, but I know not the Meſſage.

Q. Was it your Opinion, when the Lieutenants ſaid, It was Time enough, that they meant, it was Time enough to bear down? Or, That it would be Time enough to think of hauling off?

A. I underſtood, they meant, that they might bear down; and that there would be Time enough to think of hauling off.

Then he withdrew.

John Walker, Midſhipman of the *Dorſetſhire*, called in, and ſworn.

Such Part of his Depoſition (made 31ſt of *Auguſt* 1745, before the Judge-Advocate) as relates what paſſed between the Captain and Lieutenants, was read; *viz.*

" SOME time afterwards the *Marlborough* " loſt her Maſts, upon which the *Dorſet-* " *ſhire*'s Head-ſails were braced to the Maſt, " in order to keep the *Real*'s Quarter open; " but the *Real* ſhot ſo faſt ahead, that ſhe was " ſoon ſhut in by the *Marlborough*, which " obliged the *Dorſetſhire* to leave off Firing; " and then her People were employed in re- " pairing the Rigging, ſecuring the Main- " maſt, pumping the Ship, and repairing ſome " Guns, for about Half an Hour: In the mean " time an Officer came on board the *Dorſet-* " *ſhire*, and aſked for the Captain: This De- " ponent ſhewed him the Captain: He then " told the Captain, It was the Admiral's Or- " ders he ſhould aſſiſt the *Marlborough:* Cap- " tain *Burriſh* ſaid, He wiſhed he knew what " the Admiral would have him do, and he " ſhould be glad to do it. He likewiſe aſked " the Lieutenant, If he thought it would be " agreeable to the Admiral, if he bore down " ahead of the *Marlborough*, and engaged the " *Real?* The Officer anſwered, He did not " know any farther, but he was to aſſiſt the " *Marlborough*: The Officer then went away, " but ſoon returned along-ſide the *Dorſetſhire*, " and told the Captain, It was the Admiral's " Orders for him to bear down, and engage " the *Real:* In bearing down to her, Captain " *Burriſh* ordered this Deponent to call the " Lieutenants to him; and this Deponent de- " ſired Mr. *Penrice*, a Midſhipman, quartered " at the Braces, to call ſome of them; and " called the reſt himſelf: When they came " up, this Deponent was preſent, and heard " the Captain ſay to the Lieutenants, Gentle- " men, I ſent for you, to ſhew you the Situa- " tion of our Ships to Windward, likewiſe " thoſe Five Sail of the Enemy that are aſtern " of us: I have my Orders to engage the *Real*, " which you ſee I am bearing down to: Mr. " *Page* and Mr. *Griffith* then ſaid, Sir, we can " do it with Safety; Mr. *Davids* and Mr. " *Smelt* added, To be ſure we can: Then the " Captain ſaid, Gentlemen, I did not ſend for " you, to aſk your Opinions, but only to ob- " ſerve, That not one of our Ships is coming " down to my Aſſiſtance, in order to cut " thoſe Five Sail off; and in caſe thoſe Five " Sail ſhould oblige me to haul my Wind " again, and leave the *Marlborough*, that you " may be able to indemnify my Conduct, " if called in Queſtion: Or Words to that " Effect."

And he declared the ſame to be true.

Q. Was you near the Captain?

A. I was cloſe to him.

Q. What Reply did the Lieutenants make to Captain *Burriſh*, upon what he ſaid to them in regard to bearing down?

A. Mr. *Page* and Mr. *Griffith* ſaid, They could do it with Safety: And Mr. *Davids* and Mr. *Smelt* ſaid, To be ſure they might: And the Captain ſaid, He did not ſend for them for their Advice; but only that they might juſtify him, if he was obliged to haul off.

Q. Where was Captain *Cole* at that Time?

A. With the Marines, as far aft as the Mizenmaſt.

Q. At what Part of the Quarter-deck were the Captain and Lieutenants?

A. At the Forepart of the Quarter-deck, by the foremoſt Bittacle.

Q. Did the Lieutenants continue on the Quarter-deck?

A. They went down directly to their Quarters.

Q. Where was Lieutenant *Short*, of Marines, at that Time?

A. Cloſe by the Lieutenants—But I don't think the Captain of Marines was near enough to hear.

Q. Could you hear what paſſed?

A. Yes; I was cloſe by.

Q. Were the Lieutenants at their Stations, when the Second Meſſage was brought?

A. Yes, they were.

Q. Did you ever hear the Lieutenants adviſe Captain *Burriſh* not to bear down?

A. No; but they adviſed him to bear down.

Then he withdrew.

William Penriee, Midſhipman of the *Dorſetſhire*, called in, and ſworn.

Such Part of his Depoſition (made 31ſt *Auguſt*, 1745, before the Judge-Advocate) as relates what paſſed between Captain *Burriſh* and the Lieutenants, was read, as follows; *viz.*

"THAT, ſoon afterwards, the *Dorſetſhire* bore away again, and the Lieutenants were ordered to be called; and they were called accordingly by this Deponent, who went forward to call our Fourth Lieutenant on the Lower-Gun Deck, and was above his Ankles in Water; and he ſaw the Lieutenant buſy, putting a Truck on one of the Guns: That this Deponent then went on the Quarter-deck, and heard Captain *Burriſh* ſay to the Lieutenants, Gentlemen, I ſent for you, only to ſhew you the Situation of our Ships to Windward of us, and likewiſe the Five Sail of our Enemies aſtern of us; and I have Orders to go and engage the *Real*, which you ſee I am going to do. Then the Third Lieutenant, Mr. *Griffith*, made Anſwer, and ſaid, We could do it with Safety. The Captain then reply'd, He did not aſk their Opinions; but you ſee, there are none of our Ships to Windward, that offer to bear down to our Aſſiſtance: So, in caſe that thoſe Five Sail of our Enemies ſhould oblige me to haul my Wind, and leave the *Marlborough*, and my Conduct ſhould be called in Queſtion, I hope, Gentlemen, you'll be able to anſwer for my Conduct. They made Anſwer, and ſaid, They could; and then went to their Quarters."

And he declared the ſame to be true; and particularly obſerved, that Mr. *Griffith* ſaid, They could bear down with Safety; and the others ſaid, To be ſure they could.

Q. Where was you quartered?

A. At the Fore-braces.

Q. How came you on the Quarter-deck?

A. I was ſent to call the Lieutenants. I waited till Lieutenant *Smelt* came up; and then followed him to the Quarter-deck.

Q. Who ordered you to call the Lieutenants?

A. Mr. *Walker*, Midſhipman.

Q. At what Part of the Quarter-deck was the Conſultation held?

A. By the foremoſt Bittacle.

Q. Did you hear the Lieutenants propoſe, not to bear down?

A. No; but, on the contrary, they adviſed it.

Q. Where did you obſerve the Captain of Marines was?

A. He was juſt by.

Q. Was there any Noiſe, to prevent his Hearing?

A. No, there was no unuſual Noiſe.

Q. Did you ever hear Captain *Cole* ſay, that he heard the Firſt and Second Lieutenants adviſe the Captain not to bear down?

A. No, I ſaw him look very pale; but whether he was afraid or no, I can't tell.

The Court told him, This latter Part was nothing to the Purpoſe; and bid him anſwer only to what he was asked.

Q. Did you hear, that he afterwards ſaid ſo to any body elſe?

A. No.

Q. Did you hear the Lieutenants find fault with the Captain's Behaviour?

A. No.

Then he withdrew.

Andrew Petty, Quarter-Gunner of the *Dorſetſhire*, called in, and ſworn.

His Affidavit (made the 3d *September*, 1745, before the Deputy Judge-Advocate) was read, as follows; *viz.*

"THAT, during the time of the Engagement, he was quartered at the Main Rigging; and being on the Quarter-deck, when Captain *Burriſh* ſent for all the Lieutenants aft, I was willing to hear what was ſaid, and followed them aft: Then I heard Captain *Burriſh* ſay, Gentlemen, I have ſent for you all, to deſire you will take notice of the Ships to Windward, and the Five Sail of the Enemies Ships, which are coming up to us: I think it proper to bear down nearer the *Real*; and if I ſhould be forced to haul up by theſe Five Sail, and none of our Ships ſhould happen to bear down to our Aſſiſtance, that you may be the better able to anſwer for my Conduct: Upon which, I heard Lieutenant *Page* and Lieutenant *Griffith* ſay, We may bear down very ſafely. Captain *Burriſh* returned Anſwer, I don't ſend for you aft for Advice, but to take notice of the Diſpoſition of the Ships; and I deſire you may have ſpare Cartridges of Powder at your reſpective Quarters. We were then bearing down, and ſo continued till we engaged the *Real*, and ſhe bore away."

And he declared the ſame to be true; and particularly obſerved, that the Lieutenants were all very willing to bear down, and ſaid, There would be time enough to think of hauling off, before thoſe Five *Spaniſh* Ships could come up to them.

Q. Where was you quartered?

A. At the Main Rigging.

Q. Did all the Lieutenants conſent to bear down?

A. Yes.

Q. Did they ſay any thing to the contrary?

A. No.

Q. How came you on the Quarter-deck?

A. I

A. I was quartered there, at the Main Rigging.

Q. Did you think, that the Lieutenants, as brave Men, were for fighting the Enemy?

A. I believe ſo; and particularly remember, that Mr. *Page*, whom I frequently ſaw, as he was quartered upon the Upper-deck, was very brisk and active.

Then he withdrew.

Chriſtopher Priſſick, Midſhipman of the *Dorſetſhire*, called in, and ſworn.

His Affidavit (made 3d *September* 1745, before the Deputy Judge-Advocate) was read; *viz.*

"THAT, during the time of the Engagement aforeſaid, he was quartered at the "Braces forward; and that, ſoon after the Admiral's Lieutenant went from the Ship, the "Captain ordered all the Lieutenants to be "called: I was then on the Quarter-deck, and, "deſirous to hear what was ſaid, followed them "cloſe to the Captain; when Captain *Burriſh* "told them, that the Admiral's Lieutenant had "been on board with the Admiral's Orders for "us to go down and aſſiſt the *Marlborough*; "which, ſaid he, I am now going to do. Mr. "*Griffith* made Anſwer, We might do it with "Safety. Then the Captain deſired them to "take notice of the Poſition of the Ships aſtern "of us; and alſo to take notice, that there was "not one of our Ships bearing down, but our-"ſelves; and that the Enemy's Ships aſtern "would ſoon be up with us: Then the Lieu-"tenants ſeparated, and went every one to his "Quarters. And this was all that I heard on "that Occaſion."

And he declared the ſame to be true; and added, He particularly remembered, that Mr. *Griffith* ſaid, They might bear down with Safety, which none of the other Lieutenants contradicted.

Q. Were the other Lieutenants by?

A. Yes.

Q. Did they ſeem to behave with Reſolution?

A. They did.

Q. Where was the Captain of Marines?

A. Juſt by the After-bittacle, where he might have heard what was ſaid.

Q. Did you hear the Captain ſay, that he did not ſend for them for Advice, but to ſhew them the Poſition of our and the Enemies Ships?

A. I don't remember.

Q. What did the Captain ſay afterwards?

A. Bid them return to their Quarters.

Q. Where was you quartered?

A. At the Braces forward. But when the Lieutenants were ſent for, Curioſity led me to follow them to the Quarter-deck, to hear what paſſed.

Then he withdrew.

The Priſoners then moved, that the Captain's Certificate, which they had delivered to the Judge-Advocate, might be read; but the Court agreeing, that the ſame could not be admitted as Evidence, the Priſoners moved, that Captain *Burriſh* himſelf might be admitted to give Evidence: Upon which the Priſoners were ordered to be removed, and the Audience to withdraw: And then the Court conſidered the Priſoners Requeſt, and, after ſome Debate thereupon, it was propoſed, that the following Queſtion ſhould be put; *viz.*

Is it the Opinion of the Court, That Captain *Burriſh*, who is now a Priſoner under a Criminal Proſecution, can be admitted as a Witneſs, before the Court, in relation to the Conduct of the Perſons who were his Lieutenants, at the Time the Facts were committed, for which he himſelf is under ſuch Criminal Proſecution?

Which being objected to, as a Point of too much Difficulty for the Court abſolutely to determine; it was agreed, that the following Queſtion ſhould be firſt put; *viz.*

Is it the Opinion of the Court, That the aforegoing Queſtion ſhould be now put?

It unanimouſly paſſed in the Negative.

Then the Priſoners were again brought back, and the Audience re-admitted, and the Preſident acquainted the Priſoners with the Reſolution of the Court, and that it might not be proper to admit Captain *Burriſh*'s Evidence: And being aſked, if they had any other Witneſſes, they deſired, that Two more might be examined.

Richard Jocham, Captain's Clerk of the *Dorſetſhire*, called in, and ſworn.

Q. Was you on the Quarter-deck, when the Captain ſent for the Lieutenants?

A. I was then on the Quarter-deck with the Captain.

Q. What paſſed, when the Lieutenants came to the Captain?

A. The Captain ſent for the Lieutenants, and told them, he was going to the *Real*; and ſhewed them the Poſition of the Enemies Ships aſtern, and of our Ships to Windward; and ſaid, He was bearing down upon the *Real*; and deſired the Lieutenants to take notice of the Five Ships aſtern, which were coming up, and of our Ships to Windward. One of the Lieutenants then ſaid (I think it was Lieutenant *Griffith*), We might go down with Safety. The Captain then ſaid, I don't ſend for you to ask your Advice, but to ſhew our Poſition, that if we ſhould be obliged to haul off, you may be able to anſwer for my Conduct.

Q. Did you ever ſee the Lieutenants backward in the Engagement?

A. No. I ſaw them but that time on the Quarter-deck.

Then he withdrew.

Thomas

Thomas Limberry, Midſhipman of the *Dorſetſhire*, called in, and ſworn.

Such Part of his Affidavit (made 31ſt *Auguſt* 1745, before the Judge-Advocate) as relates what paſſed between the Captain and Lieutenants on the Quarter-deck, was read, as follows; *viz.*

" THE Captain ordered the Helm aweather " again; and then ſent for all the Lieute- " nants, and told them, to be ſure to have " ſpare Cartridges of Powder upon each Deck, " for that he was going along-ſide the *Real*: " He alſo deſired they would obſerve the Five " *Spaniſh* Ships aſtern were coming up very " faſt, and none of our Ships coming down to " back us: Therefore, if he ſhould be obliged " to leave the *Marlborough*, they might anſwer " for his Conduct: But he did not hear what " Anſwer the Lieutenants made thereto."

And he declared the ſame to be true.

Q. Where was you quartered?

A. On the Quarter-deck.

Q. Did you obſerve the Lieutenants backward in their Duty?

A. No.

Q. Did they go to their Quarters, immediately after the Captain ſpoke to them?

A. Yes.

Q. Do you know what the Lieutenants ſaid, in Return to what the Captain ſaid to them?

A. No.

Then he withdrew.

The Priſoners were then aſked, If they had any thing further to offer in their Defence?—They anſwered, they had not: Upon which the Marſhal was ordered to remove them out of the Court; and Directions were given for the Audience to withdraw.

The Court then took into their Conſideration the Evidence that had been given in relation to the Priſoners: And having maturely conſidered the ſame, the Court agreed, that the following Queſtion ſhould be put: Which was done accordingly; *viz.*

Is it the Opinion of the Court, That the Charge againſt the Lieutenants, of putting back, or diſcouraging the Service, by their Agreement with, and Advice to, Captain *Burriſh*, not to bear down upon, and engage the Enemy (contrary to the Orders and Commands of the Admiral), has been proved, either in the Whole, or Part?

And the Court unanimouſly agreed, That the Charge had not been proved, either in the Whole, or in Part.

The Court then agreeing to the following Queſtion, it was alſo put; *viz.*

Is it the Opinion of the Court, That the ſaid Lieutenants, ſo far from giving Advice to Captain *Burriſh*, tending to diſcourage the Service, did, by what they, or ſome of them, ſaid to Captain *Burriſh* (and in which they all concurred), encourage his Bearing down towards the Enemy, agreeable to the Admiral's Orders?

And the Court unanimouſly agreed, That, according to the Evidence which had been given to the Court, the Lieutenants did, by what, they or ſome of them, ſaid to Captain *Burriſh* (and in which they all appeared to have concurred), encourage his Bearing down towards the Enemy, agreeable to the Admiral's Orders.

The Judge-Advocate then drew up the Sentence agreeable to the ſaid Reſolutions: Which being approved, and ſigned by the Court, the Marſhal was directed to bring in the Priſoners: And, the Audience being again admitted, the Judge-Advocate, by Direction of the Preſident, read the Sentence as follows: *viz.*

At a Court-Martial, aſſembled on board his Majeſty's Ship the *London*, at *Chatham*, on the 23d of *September*, 1745, and continued to be held, by Adjournment, on the 24th of the ſame Month;

PRESENT

Sir *Chaloner Ogle*, Admiral of the *Blue*, and Commander in Chief of his Majeſty's Ships in the Rivers of *Thames* and *Medway*, and at the *Buoy of the Nore*, } Preſident,

Perry Mayne, Eſq; Rear-Admiral of the *Blue*,
Capt. *William Parry*,
William Chambers,
Robert Allen,
Sir *William Hewett*,
Sheldrake Laton,
Sir *Charles Molloy*,
Smith Callis,
Robert Erſkine,
George Elliott,
Robert Swanton,
Hon. *Arch. Stuart*,
Thomas Smith, Eſq;
Capt. *Charles Windham*,
James Rentone,
Thomas Frankland,
Charles Colby,
Joſeph Hamar,
Francis Geary,
Geo. Brydges Rodney,
John Pittman,
Edward Spragge,
Richard Haddock,
John Orme;

All duly ſworn, according to Act of Parliament;

INquiry was made by the Court (in purſuance of an Order from the Right Honourable the Lords of the Admiralty to Sir *Chaloner Ogle*, dated the 11th of this Month), into the Conduct of Lieutenants *Page*, *Davids*, *Griffiths*, and *Smelt*, who were Lieutenants of his Majeſty's Ship the *Dorſetſhire*, at the Time of the late Eugagement between his Majeſty's Fleet and the Combined Fleets of *France* and *Spain*, off *Toulon*; and they were tried for the ſame, upon a Charge prepared againſt them by the Proſecutors for the Crown, and laid before the Court by the Judge-Advocate: And the Court, having examined the Witneſſes in Support of the Charge, and alſo the Witneſſes produced in

behalf of the Parties accused, and maturely considered the same, were unanimously of Opinion, That the Charge against the said Lieutenants, of putting back, or discouraging the Service, by their Agreement with, and Advice to Captain *Burrish*, not to bear down upon, and engage the Enemy, contrary to the Orders and Commands of the Admiral, had not been proved, either in the Whole, or in Part; but, on the contrary, it appears to the Court, That the said Lieutenants, by what they, or some of them, said to Captain *Burrish*, and in which they all concurred, did encourage his Bearing down towards the Enemy, agreeable to the Admiral's Orders: And therefore the Court do unanimously acquit them the said Lieutenants *Page*, *Davids*, *Griffiths*, and *Smelt*, from every Part of the Charge exhibited against them: And they are hereby acquitted accordingly.

Fran. Geary,
Smith Callis,
G. Rodney,
R. Erskine,
J. Pittman,
George Elliott,
E. Spragge,
Rob. Swanton,
R. Haddock,
Archibald Stuart,
John Orme.

C. Ogle,
P. Mayne,
Thomas Smith,
Wm. Parry,
Charles Windham,
Will. Chambers,
Ja. Rentone,
Robert Allen,
Thomas Frankland,
Wm. Hewett,
Charles Colby,
Sheldrake Laton,
Jos. Hamar,
C. Molloy,

Charles Fearne, Judge-Ad.

And the Marshal was thereupon ordered by the Court to discharge the Prisoners out of his Custody.

Then the Court adjourned till To-morrow Morning, at 8 o'Clock.

D THE

The FIRST DAY's TRYAL OF Captain GEORGE BURRISH,

On Board His Majesty's Ship the *London*, at *Chatham*,

WEDNESDAY, 25th September, 1745.

THE Court met, according to Adjournment; and consisted of the following Members; *viz.*

Sir *Chaloner Ogle*, President.

Rear-Admiral *Mayne*,	*Thomas Smith*, Esq;
Capt. *William Parry*,	Capt. *Charles Windham*,
William Chambers,	*James Rentone*,
Robert Allen,	*Thomas Frankland*,
Sir *William Hewett*,	*Charles Colby*,
Sheldrake Laton,	*Joseph Hamar*,
Sir *Charles Molloy*,	*Francis Geary*,
Smith Callis,	*Geo. Brydges Rodney*,
Robert Erskine,	*John Pittman*,
George Elliott,	*Edward Spragge*,
Robert Swanton,	*Richard Haddock*,
Hon. *Arch. Stuart*,	*John Orme*.

Captain *Burrish* was brought in by the Marshal.

The Court was sworn.

The Charge against Captain *Burrish* was read, as follows; *viz.*

Charge against George Burrish, *Esq*;

First, THAT, on the Eleventh Day of *February* in the Year of our Lord 1743, *Thomas Mathews*, Esq; was Admiral and Commander in Chief of his Majesty's Fleet in the *Mediterranean* Sea; and *George Burrish*, Esq; being then and there Captain and Commander of his Majesty's Ship *Dorsetshire*, and under the Command, and in the Division, of the said Admiral; and the said *Thomas Mathews* being in Sight and View of the Combined Fleets of the King of *Spain*, his Majesty's then declared Enemy, and the *French* King, his Ally and Confederate; and the said Combined Fleets being very near, and in Likelihood of an Engagement with his Majesty's said Fleet; the said *Thomas Mathews* did cause the proper Signal to be made to engage; and did then and there, with several of his Majesty's Ships under his Command, bear down upon, engage, and join Battle with, his Majesty's said Enemies, and endeavour to take, fire, kill, and endamage the said Enemy; and that the said *George Burrish*, then having the Command of his Majesty's said Ship *Dorsetshire*, was in full Sight and View of the Signal to engage, as aforesaid, and in View of the said Engagement; and well knew the Duty required by the said Signal; and that, by the Articles of War, his Majesty's Instructions, and the Discipline of the Navy, it was his Duty to have done his utmost to take, fire, kill, and endamage his Majesty's said Enemies: Yet the said *George Burrish* did not do his utmost to bear down upon, fight, or engage with, his Majesty's said Enemies, as he might and ought to have done; but, instead thereof, withdrew, or kept back from the Fight; and kept and continued, with the said Ship under his Command, to Windward of the Enemy, during all or the greatest Part of the said Engagement; notwithstanding it was in his Power to have engaged, with the said Ship under his Command, in his proper Station, in Fight with his Majesty's said Enemies, had he used the proper Endeavours for that Purpose, and though it was his Duty so to have done; and kept and continued out of his Station, and above the Distance of Point-blank Shot from his Majesty's said Enemies, during the greatest Part of the said Engagement; in Breach of the Articles of War, his Majesty's Instructions, and the Commands of the Admiral, as aforesaid.

Second, That, during the Engagement between his Majesty's Fleet and the Combined Fleets of *France* and *Spain*, Admiral *Mathews* sent Two several Orders or Commands to the said *George Burrish*, Esq; to bear down, and engage the Enemy in his Station; which he might have done: Yet notwithstanding he the the said *George Burrish*, Esq; did not bear down and engage the Enemy in his Station; but kept and continued to Windward of his Station; and pretended, That he had no Powder filled; although an Engagement had been expected several Days preceding, and there then was, or ought to have been, Gunpowder sufficient filled for him to engage; in Disobedience to the Commands of the Admiral, and Breach of his Duty.

Third, That, by the Twentieth Article of his Majesty's Fighting Instructions to his Commanders, it is expresly charged and commanded to the Effect following; *viz.* "Every Com-"mander is to take care, that his Guns are not "fired, till he is sure he can reach the Enemy "upon a Point-blank:" Yet notwithstanding he the said *George Burrish*, Esq; did, on the Eleventh of *February* aforesaid, fire and cause to be fired at the Enemy Two hundred, or, at least, One hundred Shot, when he was not in Reach

of the Enemy upon a Point-blank; and many of them when he was not even in Reach of the Enemy on random Shot; in Breach of his Duty, and Violation of the Obedience due to his Majesty, and his Instructions.

Fourth, That, during the Engagement aforesaid between Part of his Majesty's Fleet and the said Combined Fleets, his Majesty's Ships *Namur* and *Marlborough* were hard pressed; and the latter was disabled, having her Main and Mizen Masts shot away; and, after she was so disabled, as aforesaid, continued for a considerable Time engaged in Fight with his Majesty's Enemies; which he the said *George Burrish* saw, he the said *George Burrish* then being in Command as aforesaid, and being in Station the next Ship to the *Marlborough*, and capable of yielding Assistance and Relief to his Majesty's said Ships *Namur* and *Marlborough*, by going with his Majesty's Ship *Dorsetshire*, then under his Command, to their Assistance; which he might and ought to have done, and which he was expresly commanded by the said Admiral *Mathews* to do, and which is injoined by the Twenty-second Article of his Majesty's Fighting Instructions: Notwithstanding which, he the said *George Burrish* did not do his utmost to assist and relieve his Majesty's said Ships; but withdrew, and kept back, with his Majesty's said Ship under his Command, from the Fight or Engagement, contrary to his Duty, and the Articles of War; and was thereby one of the principal Causes of the Miscarriage of his Majesty's said Fleet.

Fifth, That, during the said Engagement, the proper Signal was made, and Orders given by the said *Thomas Mathews*, for the Captain of the *Anne-Galley* Fireship to bear down upon the *Real*, one of the Ships of his Majesty's said Enemy, and to burn, sink or otherwise destroy his Majesty's said Enemies: And the said Ship, and the Captain of the said *Anne-Galley* Fireship, did accordingly bear down towards his Majesty's said Enemies, and the said Ship *Real*, in order to burn, sink and destroy her; but the said Fireship, for want of proper and necessary Succour and Support from his Majesty's said Ships then in Sight and View of the said Fireship, was herself sunk, burnt, or otherwise destroyed, by his Majesty's said Enemies, without doing any Execution upon his Majesty's said Enemies: And that the said *George Burrish*, having then the Command of his Majesty's said Ship *Dorsetshire*, and being in Sight and View of the said Fireship, when she was going down upon his Majesty's said Enemy's Ship *Real*, and knew the Improbability of her doing any Execution, and the Danger she was in of being destroyed by the Ships of his Majesty's said Enemies, before she could do any Execution, if she was not covered and succoured by some of his Majesty's Ships; and the said *George Burrish* was desired and requested, by the Captain of the said Fireship, to assist him: Notwithstanding all which, he the said *George Burrish* declined, neglected and refused to cover, succour or support the said Fireship; although the Ship under his Command was not then engaged with any of his Majesty's said Enemies; and notwithstanding the Wind was fair for that Purpose, and the Ship under his Command not disabled; and which he could and might have done, if he had thought proper; and which was his Duty to have done, as a Captain and Commander in his Majesty's said Fleet: And his Behaviour herein was contrary to the Articles of War, his Majesty's Instructions, and the Discipline of the Navy.

Sixth, That the said *George Burrish* was and is guilty of Disobedience to his Majesty's Instructions, and the Signals and Commands of the Admiral, and Neglect of Naval Military Discipline, and divers notorious Breaches of his Duty, as a Captain and Commander of one of his Majesty's Ships of War, upon the said Eleventh Day of *February*, during the said Engagement of his Majesty's said Fleet with the Combined Fleets of *France* and *Spain* in the *Mediterranean* Sea; and was one of the principal Causes of the Miscarriage of his Majesty's said Fleet.

Prisoner.——I should not wonder, if the Court should be prejudiced, as I don't doubt but every Body has conceived great Prejudices against me, from the infamous Representations made by Mr. *Lestock* of the Situation of the Ships, during the Action, and the Behaviour of the Commanders; but I hope I shall be able to make it appear in a quite different Light.

President.——I am much surprised to hear you say, Every body is prejudiced against you; I am sure none of the Members of the Court have conceived any Prejudice against you; but are all ready to do you the utmost Justice.

Prisoner.——I did not mean, that the Members of the Court are prejudiced against me; for I do not doubt their doing me Justice, as I have the highest Opinion of their Honour and Integrity.

Then the Witnesses, in Support of the Charge, were ordered to be called in.

Captain *Thomas Knowler*, late Lieutenant of the *Namure*, called in, and sworn.

His Affidavit was read, as follows; *viz.*

Captain Thomas Knowler, *late Lieutenant of his Majesty's Ship* Namur, *maketh Oath*,

THAT he was a Lieutenant on board of the said Ship, during the Month of *February*, 1743, in his Majesty's Fleet in the *Mediterranean*, under the Command in Chief of Admiral *Mathews*.

That, in the Morning of the Eleventh Day of *February*, a Signal was made for the Line of

of Battle ahead; and that Captain *Pett* commanded his Majesty's Ship *Princessa*, Captain *Burrish* the *Dorsetshire*, and Captain *Ambrose* the *Rupert*, and were respectively in Sight of the said Signal, as this Deponent believes.

That the Combined Fleets of *France* and *Spain* were about Three or Four Miles distant from the Centre of his Majesty's Fleet, and in Line of Battle, when the said Signal was made.

That, about Eleven o'Clock, Admiral *Mathews* made the Signal to engage the Enemy, and about One o'Clock the Admiral (in the *Namur*), the *Marlborough*, and *Norfolk*, bore down upon, and engaged in Fight with his Majesty's Enemies; and the *Marlborough* was disabled, by having her Main and Mizen Masts shot away, and was hard pressed in the said Engagement.

That, when the *Namur* was shot ahead of the *Real*, and the *Marlborough*'s Masts gone, and she continued engaged with the *Real*, and before the Fireship blew up, he saw the *Princessa* upon the *Namur*'s Larboard-Bow, and, as he believes, about Point-blank Shot fom the Enemy.

That the *Princessa* was stationed in the Line of Battle that Day, between the *Norfolk* and *Somerset*.

That the *Dorsetshire* and *Rupert* bore down with the Admiral, but not so far, or so near the Enemy, as he did, and not far enough to form the Line; and that they might have bore down nearer, and got into their Stations, there being Wind sufficient for that Purpose, if the Captains of those Ships had thought proper.

About Nine o'Clock, in the Morning of the 11th of *February*, he was sent by Admiral *Mathews*, and delivered Orders to the Commanders of the *Dorsetshire* and *Rupert*, to make all the Sail they could, and close the Line as near as possible: That, after the *Marlborough* lost her Masts, he saw the *Dorsetshire* and *Rupert* to Windward of the *Marlborough*, and he believes, within Gun-shot of the Enemy, but whether within Point-blank or not, he cannot say.

That the *Anne Galley* Fireship bore down upon the *Real*, and was not covered or conducted by any of his Majesty's Ships, and passed in Sight and View of the *Dorsetshire*, *Essex*, and *Rupert*, who were in such a Position to Windward, that they might have conducted and covered her; but she had not any Assistance given her from any of those Ships, but was blown up without any Effect.

Thomas Knowler.

Sworn before me, this 13th
Day of *September*, 1745
Cha. Fearne, Ju. Ad.

And he declared the same to be true.

Q. Was Captain *Burrish* in his Station?
A. He was a little to Windward.

Q. When the Engagement began, was he to Windward, or to Leeward?

A. I was then at my Quarters, and did not observe.—He was to Windward when the *Marlborough*'s Masts were gone.

Q. Was he to Windward of the Line, or the *Marlborough*?

A. He was to Windward of both.

Q. Are you positive, that he was to Windward of the Line?

A. I am positive, that he was so, when the *Marlborough*'s Masts were gone.

Q. Did he bear down equally with the *Marlborough* and *Namur*?

A. He was more to Windward than they were.

Q. What Message did you carry to Captain *Burrish* from the Admiral?

A. That he should bear down and make all the Sail he could to close the Line.

Q. Was this during the Engagement?

A. No; it was in the Morning.

Q. What Time did the *Namur* and *Marlborough* begin to engage?

A. About One o'Clock.

Q. And the Message you carried to Captain *Burrish*, was in the Morning?

A. Yes; about Nine o'Clock.

Q. What did Captain *Burrish* do, in consequence of that Message?

A. I know not; I went on with the same Message to other Ships astern of the *Dorsetshire*; and, on my Return, I saw the *Dorsetshire* more in the Line than when I delivered the Message.

Q. What was the *Dorsetshire*'s Station in the Line?

A. The next Ship astern of the *Marlborough*.

Q. Was the *Namur* close upon a Wind, when you went with the Message?

A. No; about a Point from the Wind, or better.

Q. Upon what Tack?

A. The Larboard Tack.

Q. What Answer did Captain *Burrish* give to the Message?

A. I don't remember.

Q. Did you see the Captain?

A. Yes.

Q. Did he say he'd obey?

A. He said to that Purpose; but I can't remember the Words.

Q. Did you carry any other Message?

A. I was not out of the Ship after the Engagement began.

Q. Did you observe the *Dorsetshire* to be in the Line, in any Part of the Day?

A. I don't remember she was so much in the Line as upon my Return from delivering the Admiral's Message to the several Ships astern; and then not absolutely so.

Q. Did you carry a second Message from the Admiral to the *Dorsetshire*?

A. No.

Q. Was

Q. Was you ever on board, to direct Captain *Burriſh* to cover the Fireſhip?

A. No.

Q. At your Return, when you obſerved the *Dorſetſhire* to be moſt in the Line, had the Admiral altered his Courſe?

A. No.

Q. Did the *Dorſetſhire* ever bear down?

A. Yes; ſhe bore down within Gun-Shot.

Q. How near to the Enemy was the *Dorſetſhire*, when you ſaw her, after the Engagement began?

A. Within random Gun-Shot — I do not remember ſeeing her, after I went down to my Quarters, till the *Marlborough* was diſabled.

Q. How near was ſhe then to the Enemy?

A. Within Gun-Shot.

Q. After the *Marlborough*'s Maſts were gone, did the *Dorſetſhire* engage within Point-blank Shot?

A. I can't be ſure whether ſhe did, or not.

Q. Was ſhe within Point-blank, or random Shot?

A. I can't ſay poſitively.

Q. Could Shot do Execution? What Diſtance do you think ſhe was?

A. Near Half a Mile from the *Real*, as I believe.—Shot might do Execution.

Q. Do you think the *Dorſetſhire*, when ſhe fired, was able to do Execution?

A. Yes; but not much.

Q. Was ſhe, at any Time, within Muſquet-Shot?

A. No, during my Obſervation.

Q. Might ſhe have been ſo?

A. Undoubtedly; for ſhe was to Windward.

Q. Was the *Dorſetſhire*'s engaging the *Real* of any Service to the *Marlborough*?

A. I can't ſay; I think, of very little when I ſaw her.

Q. How long was it after the Engagement began, before you ſaw her?

A. I did not ſee her till after the *Marlborough*'s Maſts were gone—About Two Hours after the Engagement began.

Q. Was it in her Power to cover the Fireſhip?

A. I think any Ship to Windward might have done ſo.

Q. Where was you quartered?

A. On the Lower-deck, forward.

Q. Where was you when you ſaw the *Marlborough*, after her Maſts were gone?

A. Looking out of the Stern-port.

Q. Was the *Dorſetſhire* always to Windward of the Admiral, during the Engagement?

A. I don't know; ſhe was, whenever I ſaw her.

Q. Was ſhe ever to Leeward?

A. I don't know; I never obſerved her to be ſo.

Q. Was the *Dorſetſhire* in her Station?

A. No; but ſhe might have been ſo, being to Windward of the *Marlborough*—I ſaw her out of the Gun-room Port, upon the *Marlborough*'s Weather-Bow.

Q. Did you ever ſee the *Dorſetſhire* between the *Marlborough* and the Enemy?

A. No.

Q. Where was the *Dorſetſhire*, when the *Marlborough*'s Maſts were gone?

A. To Windward.

Q. At what Diſtance?

A. A Muſquet-Shot to Windward of the *Marlborough*.

Q. Was the *Dorſetſhire* in her Station, when you ſaw her; or was ſhe to Windward or to Leeward of the *Namur*?

A. The *Marlborough* was right aſtern of the *Namur*, the *Dorſetſhire* to Windward of the *Marlborough*.

Q. Did the *Dorſetſhire* fire?

A. Yes; to Windward of the *Marlborough*.

Q. Was ſhe within Gun-Shot?

A. Within random Gun-Shot.

Q. Was there Wind to command the Ships at that Time?

A. There was a commanding Breeze.

Q. On your Return to the Admiral, from carrying his Meſſage to the ſeveral Ships in the Morning, did he take Notice of their not obeying his Orders?

A. I was aboard too ſoon, after delivering his Meſſage, to admit of the Admiral's making ſuch an Obſervation.

Q. How many Ships did you go on board, with the Admiral's Meſſage, after the *Dorſetſhire*?

A. Three; the *Eſſex*, *Rupert*, and *Neptune*.

Q. How long was it between your Going from, and Return to the *Namur*?

A. About Three Hours; I got back to her about Noon.

Q. Did the Admiral, on your Return, obſerve, that the *Dorſetſhire* did not obey his Orders?

A. No.

Q. Did you not, at your Return, acquaint the Admiral, That you had delivered his Orders?

A. Yes.

Q. How far was the *Marlborough* from the *Real*, when you ſaw her from the Gun-room Port?

A. More than Piſtol-Shot.

Q. How far was the *Dorſetſhire* then from the *Marlborough*?

A. About Muſquet-Shot—The *Marlborough* was loſing Ground of the *Real*, having loſt her Maſts.

Q. Did the *Dorſetſhire* fire at the *Real*, in that Poſition?

A. Yes; I ſaw Fire, which I believe was from her.

Q. Did the *Real* fire at the *Dorſetſhire* again?

A. I cannot ſay—I obſerved her to fire at the *Marlborough*.

Then the Priſoner aſked,

Q. When you came with the Admiral's Meſſage to the ſeveral Ships to cloſe, how were the Ships at that Time?

A. The Ships were not cloſed.

Q. Were Part of them cloſed?

A. I believe the Ships ahead of the Admiral were.

Q. Don't you remember the *Dorſetſhire* ever in the Line?

A. I can't ſay.

Q. Did any of the other Ships go down?

The Court obſerved, This was an improper Queſtion, becauſe, tho' the other Ships did not do their Duty, it was no Excuſe for the Priſoner.

Q. When the *Namur* wore to the Northward, did you ſee the Ships ahead, or aſtern of her?

A. I know nothing of them, being then at my Quarters forward.

Then he withdrew.

Captain *John Bentley*, late Lieutenant of the *Namur*, called in, and ſworn.

His Affidavit read, as follows; *viz.*

Captain John Bentley, *late a Lieutenant of his Majeſty's Ship the* Namur (*the Ship on board which Admiral* Mathews *hoiſted his Flag*) *at the Time of the late Engagement between his Majeſty's Fleet and the Combined Fleet of* France *and Spain off of* Toulon, *in the* Mediterranean *Sea, on the* 11*th Day of* February 1743, *maketh Oath*;

THAT, on the Eleventh of the ſaid Month of *February*, in the Morning, his Majeſty's Fleet, under the Command of Admiral *Mathews*, being in Sight of the Combined Fleets of *France* and *Spain*, the ſaid Admiral made a Signal for the Line of Battle abreaſt.

That, about Eleven o'Clock, the Enemy's Fleet was about Three or Four Miles diſtant from the Centre of his Majeſty's Fleet, and were then in a Line of Battle; and about that Time the Admiral made the Signal to engage.

That, between Twelve and One o'Clock, Admiral *Mathews*'s Diviſion being then, to the beſt of his Remembrance, pretty well formed in a Line of Battle ahead, and about Two Miles diſtant from the Enemy, the Admiral bore down with the *Namur* and *Marlborough*, but what other Ships he can't be poſitive, and began to engage the *Real*, the *Spaniſh* Admiral, about One o'Clock.

That the *Marlborough* was diſabled, by loſing her Main and Mizen Maſts about Three o'Clock; ſoon after which, this Deponent was ſent by the Admiral to the *Dorſetſhire*, which then lay on the *Marlborough*'s Weather-Quarter, and, in his Opinion, out of Point-blank Shot of the *Real*, and was not then engaged with any Ship of the Enemy, with Orders for her Commander to bear down, and aſſiſt the *Marlborough*, and to ſtop the Four *Spaniſh* Ships aſtern from coming up: That he delivered the Admiral's Meſſage to Captain *Burriſh* upon the *Dorſetſhire*'s Quarter-deck; and was anſwered by Captain *Burriſh*, That he would do ſo (or Words to that Effect); and, he thinks, he heard Captain *Burriſh* immediately give Orders for the Helm to be put aweather, the Foreſail to be let fall, and the Top-Gallant Sails to be hoiſted; but, to the beſt of this Deponent's Recollection, upon ſomebody ſpeaking to Captain *Burriſh*, he ſaid to this Deponent, Stay a little; we are filling Powder, or going to fill Powder (or Words to that Effect); I will make all the Diſpatch I can, and bear down immediately: Upon which, this Deponent put off; and juſt after he had done ſo, Captain *Burriſh* ſaid ſomething through a Speaking-Trumpet; but what it was, this Deponent could not diſtinguiſh: But, immediately afterwards, he ſaw the *Dorſetſhire* bear down, and engage with the Enemy, but with what Ship he does not know; and believes ſhe was then within Point-blank Shot, the Enemy's Shot going over the Boat, in which he was returning to the *Namur*, when ſhe was conſiderably to the Windward of the *Dorſetſhire*: That this Deponent is doubtful, whether he was once or twice ſent to the *Dorſetſhire*; but, if he went to her a Second time, what paſſed about filling Powder, he thinks, muſt have been upon the Second Meſſage.

J. Bentley.

Sworn this 5th *September* 1745,
before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Was you ſent on board the *Dorſetſhire* with Two Meſſages from the Admiral?

A.—I can't be certain, whether with one or two.

Q. Did you hear Captain *Burriſh* ſay, Stay a little, till we fill Powder?

A.—I am as certain of it as I can be at this Diſtance of Time.—I am certain he ſaid ſo, or to that Purpoſe.

Q. At what o'Clock was you ſent by the Admiral?

A.—About Three o'Clock; juſt after the *Marlborough*'s Maſts were gone.

Q. Had Captain *Burriſh* it in his Power to engage the *Real* before that Meſſage?

A. I can't ſay.

Q. Was the *Dorſetſhire* in the Line?

A. I think not—a little too far to Windward.

Q. Do you think ſhe was within random Shot of the Enemy?

A. Yes, when I was on board of her.

Q. Was ſhe within Point-blank Shot?

A. I am doubtful as to her being then within Point-blank—but ſhe bore away afterwards

within Point-blank; for, as I returned from her to the *Namur*, the Enemy's Shot flew over our Boat.

Q. What Diſtance was your Boat then from the *Dorſetſhire?*

A. About Two or Three Cables Length to Windward of her; for I took a large Sweep in my Return, in order to be a little clear of the Shot.

Q. When you carried the Admiral's Meſſage, in what Poſition was the *Dorſetſhire?*

A. The *Dorſetſhire* was then to Windward, and aſtern of the *Marlborough*; and, I think, to Windward of the *Namur*; and about the ſame Diſtance from the *Marlborough*, as the *Marlborough* was from the *Real*.—When I put off to go to the *Dorſetſhire*, ſhe muſt have been about Two Points upon the *Namur*'s Weather-Quarter.

Q. Was ſhe as near the Enemy as the *Namur?*

A. I can't tell.

Q. What was the Meſſage you carried to the *Dorſetſhire?*

A. To bear down and aſſiſt the *Marlborough*, and prevent the Four *Spaniſh* Ships coming upon her.

Q. What was Captain *Burriſh*'s Anſwer?

A. That he was filling Powder, or muſt fill Powder, or wanted to fill Powder; or ſomething like it.

Q. Did the Captain ſay, he wanted to fill Powder, when you delivered the Meſſage?

A. I believe the Captain, when he ſpoke to me, did not know of their wanting to fill Powder; but, upon ſome of the Officers ſpeaking, he told me of the Want of Powder.

Q. Did you go to any other Ship?

A. I went alſo to the *Eſſex*.

Q. Was the *Eſſex* in a Line with the *Dorſetſhire?*

A. She was about as far upon the *Dorſetſhire*'s Weather-Quarter, as the *Dorſetſhire* was upon the *Marlborough*'s.

Q. Did the *Dorſetſhire* bear down upon the Meſſage?

A. Yes.

Q. Did ſhe bear down completely into the Line?

A. I can't tell.

Q. At your Return to the *Namur*, did you obſerve the *Dorſetſhire*'s Poſition?

A. I did not.

Q. Did you carry a Meſſage to the Fireſhip?

A. Yes—to go down and burn the *Real*.

Q. Did you carry Orders to any Ship to cover and aſſiſt the Fireſhip?

A. No.

Q. When the *Marlborough* loſt her Maſts, at what Diſtance was ſhe from the *Real?*

A. About Two Cables Length.

Q. Was the *Dorſetſhire* ever ſo near?

A. I cannot tell.

Q. Did you obſerve the Diſtance of the *Dorſetſhire* from the *Real*, at that Time, or any other?

A. No.

Q. Did the Admiral ſend any other Officer upon any Meſſage after your Return?

A. Yes: But I don't know what Meſſage he went upon, or to what Ship, though I believe he went on board the Fireſhip.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. Do you think, that the *Dorſetſhire* was of any Aſſiſtance to the *Marlborough?*

A. No doubt ſhe muſt, when engaged with the *Real*, after the *Marlborough*'s Maſts were gone.

Q. Did you ſee, when the *Marlborough*'s Maſts were gone, what the *Dorſetſhire* was doing?

A. No.

Q. Was the Fireſhip ſunk ahead or aſtern of the *Real?*

A. I can't tell; nor whether ſhe was ſunk or not.

Q. What Ships fired moſt at the Fireſhip?

A. The headmoſt Ship of the Four *Spaniſh* Ships aſtern.

Q. Did you ſee the *Dorſetſhire* then engaged?

A. I can't tell.

Aſked by the Priſoner,

Q. After the Engagement began, Did the *Marlborough* keep aſtern of the *Namur*, or run to Leeward of her, between the *Namur* and the *Real*, in order to engage the *Real?*

A. I believe the *Marlborough* was abreaſt of the *Real*, and rather nearer to her than the *Namur* was.—The *Marlborough* ran cloſe up to the *Namur*, and thereby obliged her to ſhoot ahead; and probably, by that means, ſhe might go a little to Windward of the *Marlborough*.

Q. From what Quarter did you fire, after hauling off?

A. From the Starboard-Quarter.

Q. When the Admiral wore to the Northward, Did you ſee the *Dorſetſhire*, or where ſhe was.

A. I did not obſerve; being buſy at my Quarters.

Q. When you wore, Do you remember ſeeing the *Marlborough?*

A. Yes.

Q. Did you go to Windward or to Leeward of her?

A. We went to Leeward of the *Marlborough*.

The Court taking notice, That theſe Queſtions ſeemed not to be any thing to the Purpoſe; the Priſoner ſaid, He aſked them in order to prove, that he was to Leeward of the *Marlborough*.

Then Captain Bentley *withdrew.*

Samuel

Samuel Burthall (late Boatſwain of the *Anne-Galley* Fireſhip) called in, and ſworn.

His Affidavit read, as follows; *viz.*

Samuel Burthall, *late Boatſwain of the* Anne-Galley *Fireſhip, Captain* Mackey *Commander, on the Eleventh* February, 1743, *in the Fleet commanded by Admiral* Mathews *in the* Mediterranean.

THAT, about One o'Clock, the Admiral began to engage the *Real:* The *Marlborough* bore down with him, and engaged the *Real*; and likewiſe her Second aſtern: And that Captain *Mackey*'s Signal was made about Two o'Clock; and he went on board the *Namur*, and came back; and ſoon after his Signal was made for Priming: That the Lieutenant and Gunner primed the Starboard-Side; and this Deponent and the Maſter primed the Larboard-Side of the Fireſhip: Lieutenant and Gunner primed as far as the Main-Hatchway with looſe Powder; but the Larboard-Side was primed with proper Compoſition.

That, about Three o'Clock, a Signal was made for Captain *Mackey* to bear down; and Admiral *Mathews* ſent Mr. *Bentley* his Lieutenant on board the Fireſhip, and deſired Captain *Mackey* to bear down to the *Real:* Captain *Mackey* told him, He was not quite ready; but would make all the Diſpatch poſſible.—Lieutenant *Bentley* came again in about Half an Hour, and told Captain *Mackey*, If he would not bear down upon the *Real*, the Admiral would ſend ſomebody that ſhould.

Accordingly, about Three or Four o'Clock, the Fireſhip bore down towards the *Real*; and went by, and very near, the *Dorſetſhire*.

That Captain *Mackey* hailed the *Dorſetſhire*, and deſired they would hoiſt their Barge out, to take the Hands from the Fireſhip: Which they did.

That he hailed the *Dorſetſhire* again, and deſired Captain *Burriſh* would bear down, and cover him: And Anſwer was made from ſomebody on board the *Dorſetſhire*, They had got no Powder filled: And that the *Dorſetſhire* did not go down with, and cover the Fireſhip; which went down within Piſtol-Shot of the *Real*, when Mr. *Mackey* ſaid to this Deponent, Boatſwain, have you got your Hatchets ready? This Deponent anſwered, He had them ready, and new-ground. The Captain then ordered him to cut away the Tiller-Rope; which he did, and ſteered with Two Luff-Tackles in the Gunroom; and the Captain ſtood on the Head of the Ladder, for to run the Ship. The Captain then ſaid, Boatſwain, Don't you ſee that *Spaniſh* Launch? Fire, and endeavour to ſink her. This Deponent fired Four Five-Pounders at her, and diſcharged Two Muſquets at her. She then went ahead of the Fireſhip, and lay off the Sally-Port, and fired at us, as we came out of the Sally-Port; and that the Fireſhip was ſinking at the Larboard-Bow, having received ſeveral Shot in there. The Captain ordered all in to the Boat; and called to me, this Deponent, to hand a Match to him, as he ſtood upon the Ladder: And this Deponent bid *Robert Camp* to hand a Match; and he gave it to the Captain; and, he believes, ſome Sparks of it fell into the Trough: By which means, the Veſſel was blown up, having ſo much looſe Powder abaft.

That the *Dorſetſhire*, *Eſſex*, and *Rupert*, might have covered her; but they did not; nor did the Fireſhip hail the *Eſſex* or *Rupert*; and ſhe was not covered at all.

That the *Dorſetſhire*, *Eſſex*, or *Rupert*, were not in a Line with the Admiral and *Marlborough*, nor within point-blank Shot of the Enemy, till the Evening, when the Admiral wore.

Sam. Burthall.

Sworn before me this 16th Day of *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. What Diſtance was the *Dorſetſhire* from the *Real*, when you hailed her?

A. Not within Gunſhot.

Q. What Time of the Day was it, when you hailed her?

A. Between One and Two o'Clock:—Between Three and Four o'Clock.

Q. Had the *Dorſetſhire* engaged before you hailed her?

A. Yes; an 80 Gun Ship aſtern of the *Real*.—She fired, I believe, one Broadſide.—After the Fireſhip was blown up, the *Dorſetſhire*'s Boat met our Boat: When we came on board the *Dorſetſhire*, I told the Captain, I had got a wounded Man; and that we belonged to the Fireſhip.—The Captain bid us go down to the Gun-deck, where Men were wanted.—The Fireſhip was blown up, before the *Dorſetſhire*'s Boat came up to her.

Q. Do you think the Loſs of the Fireſhip was owing to her not being covered by the *Dorſetſhire?*

A. Yes, I believe it was.

Q. Did you go ahead or aſtern of the *Dorſetſhire?*

A. We went ahead of her.

Q. What Sail had the *Dorſetſhire* abroad, when you hailed her?

A. Her Topſails and Foreſail; upon a Wind.

Q. Why did you not lie to, till the *Dorſetſhire*'s Boat came on board?

A. We were ſo nigh to the *Real*, that we could not bring to, for fear of the Five *Spaniſh* Ships aſtern, which were drawing near.

Q. Was the *Dorſetſhire* nearer to the *Real*, when you came on board from the Fireſhip, than ſhe was when the Fireſhip paſſed by her?

A. Yes; ſhe was then within Gun-ſhot.

Q. Did you receive Advantage from the *Dorſetſhire*'s covering the Fireſhip?

A. No;

A. No; none at all.

Q. Was the *Dorſetſhire* the nigheſt Ship to the *Real*, when the Fireſhip blew up?

A. Yes; and, for that Reaſon, we went on board her, with a wounded Man.

Q. Was the *Dorſetſhire* to Windward or to Leeward of the *Real?*

A. She was directly aſtern, and within Gun-ſhot.

Q. Was you right aſtern, or on the Quarter of the *Real?*

A. Right aſtern.

Q. What was the *Dorſetſhire* doing when you went on board?

A. She was engaging; but I am not poſitive ſhe was then within Gun-ſhot.

Q. What was the *Marlborough* then doing?

A. Nothing at all.

Q. Where was you quartered after you got on board the *Dorſetſhire?*

A. At the aftermoſt Gun on the Lower-Gun-deck.

Q. How often did you fire that Gun?

A. Four times.

Q. Was you, during that Time, within point-blank Shot of the *Real?*

A. Yes.

Q. Did you receive any Shot from the *Real?*

A. I believe not: — They went over us.

Q. Could the *Dorſetſhire* get nearer to the *Real*, without going to Leeward of the *Marlborough?*

A. Yes.

Q. Do you think the *Dorſetſhire*'s Shot reached the *Real* before the Fireſhip blew up?

A. No: — The *Real*'s Shot went over the *Dorſetſhire*, but the *Dorſetſhire*'s did not reach the *Real*:—I ſaw them fall ſhort.

Q. Where was you then?

A. Waiting for the Signal to bear down.

Q. Did you go ahead, or aſtern, of the *Dorſetſhire?*

A. Ahead of the *Dorſetſhire*.

Q. At what time was the Gun you was quartered at fired Four times?

A. At the Time of wearing: — And it was fired from the Starboard-Side.

Q. When you wore, was that the Time you were neareſt to the Enemy?

A. Yes.

Q. Did the *Dorſetſhire* wear, and go round the *Real?*—When ſhe wore, which Side did ſhe go of the *Real?*

A. She went round to Leeward: — And, in wearing, I fired the Gun I mentioned, Four times, from the Starboard-Side.

Q. What Diſtance was you then from the *Real?*

A. Within Gun-ſhot:—We fired at each other; and the *Real* kept her Foreſail ſet all the Time, and put before the Wind when the *Dorſetſhire* wore.

Q. While you was on board, What Diſtance was you from the *Real*, all the Time of your engaging her?

A. About Two Cables Length, or more.

Q. How many Men were killed in the *Dorſetſhire?*

A. I don't know:—One of the Men that belonged to the Fireſhip ſaid, after we were on board the *Dorſetſhire*, As God has ſaved me from a Fireſhip, I'll go down and fight the Dogs: Accordingly he went down, and ſoon after was killed, as I believe, by a Shot from the *Real*; and one was wounded by another Shot; as were ſeveral others alſo.

Q. What Poſition did you lie in while engaging?—What Sail had the *Dorſetſhire* ſet?

A. She had her Topſails and Foreſail.

Q. Did the *Dorſetſhire* engage the Enemy before the Fireſhip hailed her?

A. She engaged the Ship aſtern of the *Real*, and, I believe, drove her out of the Line:—But, I think, ſhe afterwards got into the Line again.

Q. Were you then upon a Wind, or going large?

A. We were going large.

Q. Did Captain *Mackey* expreſs any Uneaſineſs at not being covered by the *Dorſetſhire?*

A. Yes: — After Captain *Bentley* came on board, Captain *Mackey* ſaid, Boatſwain, What ſhall I do? I muſt go down to the *Real*: — I anſwered—

Q. But did Captain *Mackey* expreſs any Uneaſineſs at the *Dorſetſhire*'s not bearing down, after he paſſed by her?

A. No:—We expected Captain *Norris* would have covered us.

Q. Why did you expect it?

A. It was only Diſcourſe amongſt ourſelves.

Q. Was you told by Mr. *Bentley*, that the *Dorſetſhire* was ordered to cover you?

A. No: — But we expected ſhe would: — We hailed her, deſiring that ſhe would.—Anſwer was made, They had no Powder filled.

Q. Did you yourſelf hear the Anſwer from the *Dorſetſhire?*

A. Yes:—I heard it myſelf.

Q. How was you from the *Dorſetſhire* when you hailed her?

A. We were upon her Bow, almoſt alongſide.

Q. From whence came that Anſwer? From the Quarter-deck, or Forecaſtle?

A. I cannot tell.

Q. Did you want Powder when on board the *Dorſetſhire?*

A. No.

Q. Did the *Dorſetſhire* hoiſt her Barge out, and ſend it to you immediately?

A. Yes.

Q. Was there Wind enough for the Ships to be under Command?

A. Yes:—A Breeze.

Q. Was there a great Swell?

A. No: But a ſmall Swell.

Q. How many Men were killed on board the *Dorſetſhire* after you went on board:

A. Can't tell.

Q. Were there any?

A. Yes:—I believe about Fourteen.

Q. What Damage did the *Dorſetſhire* receive?

A. She was damaged in the Main-maſt.

Q. When the Fireſhip blew up, What Diſtance was the *Dorſetſhire* from the *Real*?

A. Within Gun-ſhot.

Q. Where was you then?

A. In the Boat, cloſe by the Fireſhip:—And ſome Part of her fell upon a Man juſt by me, and ſplit his Skull.

Q. Had you no other Boats to aſſiſt you?

A. No:—The *Dorſetſhire*'s Boat met us half way, between the *Dorſetſhire* and Fireſhip, as we were going to the *Dorſetſhire*.

Q. Do you think the *Dorſetſhire*'s Barge came as ſoon as ſhe could?

A. Yes:—She came towards us as faſt as ſhe could; and could not have come ſooner.

Q. What Hour of the Day was it when you hailed the *Dorſetſhire*?

A. Between Two and Three o'Clock.

Q. Did you obſerve the *Dorſetſhire* make any Motion to cover you after you hailed her?

A. No.

Q. While the Fireſhip was bearing down, did you obſerve the *Dorſetſhire*?

A. Yes:—I looked to ſee if ſhe made any Sail to cover us.

Q. When did you get aboard the *Dorſetſhire*, after your Ship blew up?

A. About Three o'Clock.

Q. What time did you wear?

A. About Duſk:—And, in Wearing, were within a Cable's Length, or a little more, of the *Real*.

Q. What did the *Dorſetſhire* do between the Time of your getting on board her, and her wearing?

A. She lay inactive a great while.

Q. After you got on board the *Dorſetſhire*, about Three o'Clock, did not ſhe edge down nearer to engage the Enemy?

A. No:—She lay ſtill a great while.

Q. What was ſhe doing till duſkiſh?

A. Nothing at all.

Q. Did the Enemy do any thing all that Time?

A. Yes:—She kept firing at the *Dorſetſhire*.

Q. You don't remember firing any Guns from the *Dorſetſhire*, from the Time you got on board her, to the Time of wearing?

A. No:—No Guns were fired in that Time.

Q. Did you lie ſtill in the *Dorſetſhire* when the Enemy was firing upon you?

A. Yes.

Q. Had you Orders not to fire during that Time?

A. No:—I heard the Captain of the Gun-Room ſay, We may as well leave off Firing, as throw away our Shot.

Q. What was the Lieutenant of the Deck doing all that time?

A. Walking fore and aft, with his Hanger in his Hand.

Q. You ſay, There was no want of Powder.

A.—No:—There was no want of Powder.

Q. Do you think the Man was killed by the *Real*'s Fire, or that of any other Ship?

A. By the *Real*'s.

Q. What time did you ſee Shot fired from the *Dorſetſhire* to the *Real*'s Second?

A. Between One and Two o'Clock.

Aſked by the Priſoner,

Q. When you was going down to burn the *Real*, Did you go ahead or aſtern of the *Dorſetſhire*?

A. Upon her Bow.

Q. Did you hear any body hail the Fireſhip from the *Dorſetſhire*?

A. No.

Q. Was it not more reaſonable to expect the Fireſhip ſhould hear from the *Dorſetſhire*, than that the *Dorſetſhire* ſhould hear from the Fireſhip; the *Dorſetſhire* being to Windward?

A. I think they could hear better on board the *Dorſetſhire*: And it is evident they did hear, by ſending a Boat.

Q. How did the *Real* appear from the *Dorſetſhire*?

A. The *Dorſetſhire* was right aſtern of the *Real*, and of the Fireſhip, as ſhe bore down to the *Real*.

Q. When you came on board the *Dorſetſhire*, Did you obſerve any Ships to Leeward of us, nearer aſtern of the *Real*?

A. No:—The *Dorſetſhire* was the neareſt Ship.

Q. Where was you quartered?

A. On the Lower-Gun-deck.

Q. Did you obſerve what became of the Five Sail of the Enemy that were coming up?

A. No.

Q. Was the *Dorſetſhire*'s Main-maſt ſhot through, or ſplintered, or wounded, as you remember?

A. It was ſhot through.

Q. When the Fireſhip hailed the *Dorſetſhire*, for a Boat to aſſiſt her, Was ſhe going down directly to the *Real*, or did ſhe take a Sweep?

A. She was going down directly.—The headmoſt of the Five *Spaniſh* Ships fired at us; but their Shot fell ſhort.

Q. From the Time you bore down, Could the Captain of the *Dorſetſhire*, if he had Orders to cover the Fireſhip, been of any Aſſiſtance to her before ſhe blew up?

A. Yes.

Q. How long were you going down to the *Real*?

A. A Quarter of an Hour.

Q. What Sail had the Fireſhip ſet?

A. All her Sails.

Q. Was it poſſible, as the Fireſhip was under Sail, that the *Dorſetſhire*, who was lying to, could have made Sail time enough to have ſuccoured the Fireſhip?

A. Yes, I think it was poſſible.

Then he withdrew.

William Jude, Gunner of the *Dorſetſhire*, called in, and ſworn.

His Affidavit read, as follows; *viz.*

William Jude, *late Gunner of his Majeſty's Ship the* Dorſetſhire, *maketh Oath*,

THAT he was Gunner of the ſaid Ship on the 11th of *February*, 1743, in the Engagement off *Toulon*, between his Majeſty's Fleet under the Command of Admiral *Mathews*, and the Combined Fleet of *France* and *Spain*.

That the *Dorſetſhire*, Captain *Burriſh*, was ſtationed the next Ship aſtern of the *Marlborough*, and the Second Ship aſtern of Admiral *Mathews*; and that ſhe bore down towards the Enemy, when the Admiral and *Marlborough* did, but brought to near a Mile diſtant from the Enemy ſhe fired at; and began to fire at the next Ship aſtern of the *Real*, near the Time when the Admiral and *Marlborough* did at the *Real*: But that ſhe did not engage the Enemy as near as the Admiral and *Marlborough* did; nor did ſhe engage the Enemy within point-blank Shot, during any Part of the Engagement, as this Deponent believes.

In the Beginning of the Engagement this Deponent ſaw ſeveral Ships aſtern of the *Dorſetſhire*, or near that Poſition; at which time the *Dorſetſhire* was near a Mile from the Enemy; but did not obſerve what Ships they were.

That the *Marlborough* was engaged with the *Real*; and in which Engagement ſhe loſt her Main and Mizen Maſts; and appeared to be in Diſtreſs.

That, in a ſhort time after, he was ſent for by the Captain, to the Quarter-deck, who ſaid to this Deponent, How happens this, Gunner, that we have no Powder filled? I have received Orders from the Admiral to bear down, and relieve the *Marlborough*. To which this Deponent replied, Sir, we have Powder enough filled: You ſhall not want for Powder, go alongſide of what Ship you will, or where you will; or Words to that Effect. Upon which the Captain ordered a Midſhipman to call after a Boat, which had juſt put off; and tell the Officer, That he would bear down directly: And, he thinks, while he was on the Quarter-deck, he obſerved the *Namur* to bear rather upon the *Dorſetſhire*'s Starboard-Bow: That the *Dorſetſhire* afterwards bore down; but then ſhe brought to near Three Quarters of a Mile diſtant from the *Real*, or not within point-blank Shot of the Enemy; and then fired a good many Broadſides upon the *Real* at that Diſtance.

That the *Dorſetſhire* was not in her Station in the Line of Battle, as to point-blank Diſtance, during any Part of the ſaid Engagement, as he believes, till after ſhe had wore to the Northward after the Admiral; and though ſhe might have gone as near the Enemy as the *Marlborough* did, and as near as the Captain pleaſed.

That ſome time in the Afternoon the *Anne-Galley* Fireſhip bore down towards the *Real*, in order to burn her, as this Deponent apprehended; and ſhe paſſed very near the *Dorſetſhire*; and that the *Dorſetſhire* might have bore down with her, and covered her, as this Deponent believes; but that ſhe did not do it; and that the *Dorſetſhire* was not in Action at that time: But he ſays, that the *Dorſetſhire* lay with her Head towards the *Real*, or the other Ships; for he ſaw the Smoke of the Fireſhip on the Surface of the Water, out of the Larboard-Bow Port; and, at the ſame time, the *Real* was out of the Reach of the *Dorſetſhire*'s Guns to do Execution.

That the Ships aſtern of the *Dorſetſhire* might have gone down with and covered the Fireſhip, if the Captains of thoſe Ships had thought proper, as this Deponent believes; but that neither of them did ſo, as he knows of; and that the Fireſhip was deſtroyed without Effect.

Wm. Jude.

Sworn this 17th *September*, 1745,
before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Was the *Dorſetſhire* never within point-blank Shot, while ſhe engaged?

A. No, ſhe never was; though Grape-ſhot were at firſt put into the Guns.

Q. Did you lie ſtill at any time without Fireing?

A. Yes.

Q. How long?

A. I can't ſay as to Time:—I can't tell the Time ſhe lay ſo inactive.—When we brought to firſt, we were a Mile diſtant from the Enemy, and had not fired above Two or Three Broadſides before the Captain ſent for me, and ſaid, Gunner, you muſt lay our Guns down; the Shot fall ſhort. And I ſaw the Ships fire at each other, and their Shot fell juſt acroſs each other into the Water: Then I ſaid to the Captain, Look, look, Sir; here's Fighting indeed! See where the Shot fall: The Captain anſwered, The Ships were at too great a Diſtance. Then I ſaid (ſpeaking ſoftly), We are at too great a Diſtance, Sir.

Q. Did not the Captain then bear down?

A. I do not know; being then going off the Deck.

Q. Did your Shot reach the Enemy?

A. When the Metal was lowered, I believe they did; for Shot came from the Enemy on board of us.

Q. What Execution did the Enemy's Shot then do?

A. One Shot came into the Starboard-Side forward, before the Furnaces; I ſaw the Wounds occaſioned by this Shot.

Q. At

Q. At what time was this?

A. I can't tell.

Q. What Obſervations did you make of the Fire of your own Ship?

A. I could make none, becauſe of the Smoke.

Q. Was you then in the Line, or to Windward of the Line?

A. To Windward.

Q. Was you within point-blank Shot?

A. No, not till after we wore, if ever; though I don't believe we were then.

Q. Do you know of any Meſſage to the *Dorſetſhire*?

A. No: I heard of one afterwards.

Q. What Diſtance was you from the *Marlborough* when her Maſts were carried away?

A. When the *Marlborough*'s Maſts were carried away, I heard a Noiſe:—Some of our Men cry'd, Huzza!—I ſaid, I believed they had made a Miſtake, and took the *Marlborough* for the *Real*. And ſo it proved.

Q. Could you obſerve the *Marlborough* in the Engagement?

A. I could not for the Smoke.—When the *Marlborough*'s Maſts were carried away, the *Dorſetſhire* was ſhot ſo far ahead, that the *Marlborough* and *Real* were in a Line.

Q. In what Poſition was the *Marlborough* then?

A. Between the *Dorſetſhire* and the *Real*.

Q. How far was the *Dorſetſhire* then from the *Marlborough*?

A. About half a Mile.

Q. How many Rounds of Powder had you at the time of the Meſſage from the Admiral?

A. About Twenty.

Q. What do you imagine to have been the Reaſon of the Captain's asking you, Why there was no Powder filled?

A. I have been informed, Lieutenant *Page* reported ſo to the Captain.

Q. What do you apprehend was Lieutenant *Page*'s Reaſon for reporting ſo to the Captain?

A. I can't well tell:—I would ſay the gentleſt: A Blunder.

Q. Do you think the Lieutenant had any evil Intention in ſuch Report?

A. No: I believe it was a Miſtake.

Q. Did you hear anybody ſay to the Fireſhip, or the Admiral's Boat, There was now Powder filled?

A. No.

Q. Did Captain *Burriſh* tell you he had a Report, there was no Powder filled?

A. Yes: The Captain ſaid, Gunner, How comes it we have no Powder filled? I anſwered, Who tells you ſo? We have Powder enough filled to go along-ſide any Ship you will.

Q. Do you remember the *Dorſetſhire* engaged with ſmall Arms?

A. Yes, in the Beginning, as I was told; but not within Muſquet-ſhot.

Q. Was the *Marlborough* between you and the *Real*, when you wore?

A. I cannot tell.

Q. When ordered to put Grape-Shot into the Guns, did you repreſent to the Captain, that you were at too great a Diſtance?

A. No, thoſe Shot were put into the Guns when they were firſt loaded, before they began the Engagement, by the Captain's Orders.

Q. How long did the *Marlborough* lie between you and the *Real*?

A. I cannot tell.

Q. Did you give any Aſſiſtance to the *Marlborough*?

A. No, we were very inactive.

Q. Did you endeavour to get to Leeward of the *Marlborough*?

A. No.

Q. Did you cover, or endeavour to cover, the Fireſhip?

A. No.

Q. From whence did you ſee the Fireſhip?

A. Out of the Larboard-bow Port.

Q. What Time did the Ship wear?

A. I can't tell.

Q. Was the *Marlborough* as near to the *Dorſetſhire* as to the Enemy?

A. Yes, I believe ſhe might;—The *Marlborough* falling aſtern, after her Maſts were gone; and the *Dorſetſhire* probably ſhot ahead, and the *Real* fell off.

Q. Were there any Orders to you, when to fire, or when to leave off?

A. Yes: Upon my firing one Shot, which fell ſhort, ſomebody brought me Word, That the Captain would not have me fire any more.

Q. Did you fire any Shot with the Quoins taken out, and the Metal lowered?

A. Yes:—After the Firſt Firing, when the Captain found the Shot did not reach, he ordered the Metal to be lowered; and ſo it continued always afterwards.

Q. Did the Ship's Heeling occaſion the Metal to be lowered, or the Diſtance?

A. The Diſtance.

Q. As the Enemy were to Leeward, did the *Dorſetſhire* heel ſo, as to make it neceſſary for the Metal to be lowered at all? Or was it the Diſtance only that made it neceſſary?

A. No.—It was the Diſtance,—being never within Point-blank Shot; nor did ſhe heel ſo, as to make lowering the Metal neceſſary.

Q. If the Guns had been levelled horizontally, or upon a ſtrait Line with the Surface of the Water, would not the Shot have reached the Enemy?

A. No.

Asked by the Priſoner,

Q. What Difference is there between random-Shot, Point-blank Shot, and Gun-Shot?

A. People are very different as to their Judgment of Point-blank, ſome ſtretching it as far as half a Mile; but, in my Opinion, Point-blank is not above a Quarter of a Mile.

Q. Was the *Dorſetſhire* ever ſo far from the Enemy, that the Shot from either Ship could not do Execution upon the other?

A. No,

A. No:—The Shot that came on board might have done Execution; we were ſo near as to wound a Maſt, or kill a Man; yet we were never within Point-blank one of the other.

The Court asked,

Q. What Diſtance was you aſunder?

A. A Mile.

The Priſoner then aſked,

Q. Did you not ſay, that we were near enough to do Execution?

A. Yes, I take it Execution may be done at a Mile Diſtance.

Q. Do you not remember our Main-Maſt to be ſhot through?

A. It might be wounded; but I don't remember it.

Q. Do you remember any Grape-Shot, or double-headed Shot, to come on board?—Or, do you believe, That we were at ſuch a Diſtance, that Grape-Shot could come on board?

A. I think, it might poſſibly, when at the neareſt Diſtance?

Q. When was that Time?

A. In the Evening, after Wearing; we might then be within Half a Mile.

Q. At the Beginning of the Engagement, could Grape-Shot have reached the Ship?

A. I think Grape-Shot, at random, when the Metal is lowered, will fly more than a Mile.

Q. Did any double-headed Shot come on board?

A. I heard of one.

Q. Did you ſee the Wound occaſioned by it?

A. Yes,—but not the Shot that occaſioned it;—but I was told it was a double-headed Shot.

Q. You was ſhewn the Place where the double-headed Shot fixed?

A. Yes, I was ſhewn the Place where a Shot (ſaid to be a double-headed Shot) was fixed.

Q. Was you never ſhewn, that a Grape-Shot came on board?

A. I was not:—There was a Shot that broke the inſide Lining.

Q. Do you think any of our own Ships fired any Shot into or over the *Dorſetſhire?*

A. I heard, that a Shot to Windward took away her Fore-ſtay; but I can ſay nothing of it myſelf.

Q. Did you ever hear me order you to load the Guns with Grape-Shot?

A. Yes; before the Engagement, you did.

Q. Did you lay your Guns upon a Level, as we were going down?

A. Yes,—becauſe I thought we ſhould have engaged at a proper Diſtance;—but engaging at too great a Diſtance obliged me to lower the Metal.

Q. Do you think, that the Heeling of the Ship did not at all occaſion the Lowering of the Metal; but that it was the Diſtance only, that made it neceſſary to lower it?

A. I think it was the Diſtance intirely; and, that it was not occaſioned at all by the Ship's Heeling. *Then he withdrew.*

Captain *Cole* of Marines, on board the *Dorſetſhire*, called in, and ſworn.

His Affidavit read, as follows; *viz.*

Captain Bourchier Cole, *of General* Lowther's *Regiment of Marines, who was on board his Majeſty's Ship the* Dorſetſhire, *in* February 1743, *at the Time of the late Engagement off of* Toulon, *between his Majeſty's Fleet, and the Combined Fleets of* France *and* Spain, *maketh Oath;*

THAT when Admiral *Mathews*, in the *Namur*, with the *Marlborough*, bore down upon the Enemy, the *Dorſetſhire* was in the Line with them, and the Ship next aſtern of the *Marlborough*; but did not bear down with them; but ſhe ſoon afterwards bore down, and engaged the *Hercules*, the *Spaniſh* Admiral's Second aſtern, at the Diſtance of about Five hundred Yards (as he was informed, and believes); and continued to engage at that Diſtance, about an Hour, when the *Hercules* ſheered off:—And this Deponent ſays, She did not engage ſo near as the *Namur* or *Marlborough*; and apprehends ſhe engaged at too great a Diſtance.

That, after the Admiral had engaged ſome time, he ſhot ahead; and ſoon after ſent a Lieutenant on board the *Dorſetſhire*, with a Meſſage to Captain *Burriſh*; but what it was, this Deponent cannot ſay; but he thinks Captain *Burriſh* ſaid ſomething in Anſwer thereto, about Powder not being filled: But ſoon afterwards Captain *Burriſh* was called to, from a Boat which was alongſide, with a Second Meſſage from the Admiral: That, upon one of the ſaid Meſſages (but which of them he cannot ſay), Captain *Burriſh* called his Lieutenants upon the Quarter-deck, about Two o'Clock in the Afternoon; and told them, As he found the Ships aſtern were not willing to keep the Four *Spaniſh* Ships aſtern from coming up, and, as the Admiral had ſent him Orders to bear down; he aſked them, Whether it was their Opinion, That he ſhould go down, or not; for, he added, That he was of Opinion, the Four *Spaniſh* Ships aſtern would get the Weather-gage of him; and that then both himſelf and the *Marlborough* would be taken, as none of the Ships aſtern he found would aſſiſt him: Upon which they all Four agreed with the Captain in the ſame Opinion; and thereupon the Captain did not bear down and aſſiſt the *Marlborough*, or engage the *Real*.

That, at the Time this Conſultation happened between the Captain and his Lieutenants, the ſternmoſt Ships of the Enemy were about Four or Five Miles aſtern of the *Dorſetſhire*.

That ſome time afterwards the *Marlborough* going aſtern, and the *Real* ahead, Captain *Burriſh* could not bring his Guns to bear upon the Enemy, without endangering the *Marlborough*, unleſs he had bore down nearer; which he did not, but, might have done, the Wind being favourable for that Purpoſe; but, inſtead thereof,

he took that Opportunity of remounting ſome Guns, and mending his Rigging.

That, ſome time after the *Marlborough* was diſmaſted, Captain *Burriſh* bore down a Second time towards the *Hercules*; and, upon his Firing upon the *Hercules*, ſhe bore away after the Admiral.

Soon after which the ſternmoſt Ships of the Enemy came up, and exchanged Broadſides as they paſſed by each other; being then upon different Tacks.

Bourchier Cole.

Sworn this 23d *Auguſt*, 1745, before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Did you bear down with the *Namur* and *Marlborough*?

A. We did not bear down with the *Namur* and *Marlborough*; but waited for the *Hercules*.

Q. How near was the *Dorſetſhire* to the Enemy, when ſhe began to engage?

A. I can't tell.

Q. Could you do Execution?

A. I am no Judge what Cannon-Shot could do; but the Small Arms would not reach half Way.

Q. Where was you quartered?

A. On the Quarter-deck.

Q. How long did you engage the *Hercules*?

A. About an Hour.

Q. Why did you leave off?

A. Becauſe the *Hercules* bore away from us; but ſhe afterwards came again, and then we fired ſometimes at the *Hercules*, and ſometimes at the *Real*—In the *Dorſetſhire*'s Firing afterwards, Captain *Burriſh* called out, they hurt the *Marlborough*, and bid them ceaſe Firing.

Q. Were any of your Men killed?

A. I had two Marines ſhot with a Canon-Ball upon the Quarter-deck,—one killed outright;—the other wounded, who died the next Day.

Q. Did you hear who called from the *Dorſetſhire*, that there was no Powder filled?

A. I heard ſomebody ſay ſo; but I know not who it was; I underſtood it to be an Excuſe.

Q. Was it in Anſwer to the Admiral's Meſſage, or the Fireſhip's Hailing?

A. I heard thoſe Words expreſſed to the Admiral's Lieutenant; but I did not hear them ſaid to the Fireſhip.

Q. Did you hear Mr. *Bentley*'s Meſſage from the Admiral to the Captain?

A. No;—I can't ſay I did.

Q. Was you, at any Time of the Action, within Reach of Small-Arms?

A. No.

Q. Had you any Men killed by Small-Shot?

A. No.

Q. Did you ſee the Ship wounded by Grape-Shot?

A. I ſaw no Grape-Shot; but I ſaw a double-headed Shot upon the Middle Gun-deck, which I was told, came from the Enemy.

Q. Did you obſerve the Ship wounded by Grape-Shot?

A. I know nothing of Grape-Shot.

Q. Do you remember hoiſting out the Barge?

A. No.

Q. Did the Shot that killed your Men, paſs through the Ship?

A. I believe it did.

Q. Was you ever, and at what Time, within Reach of Small-Arms?

A. We were, when we wore with the Admiral.

Q. How many Marines had you on board?

A. Seventy-five or Seventy-ſix.

Q. Was you on the Quarter-deck, the whole Time of the Action?

A. Yes.

Q. Did you fire any Small-Arms, upon your Wearing?

A. No; the Marines were employed upon the Ship's Buſineſs, at the Braces and other Parts.

Q. Was the one Marine killed, and had the other his Leg ſhot off, by the ſame Shot?

A. I don't know; the Shot coming in at the Port, ſprayed off ſome Splinters, which, I imagined, did it.

Q. When did you leave off firing your Small-Arms?

A. After firing four or five Rounds.

Q. Was you never within Muſquet-Shot?

A. Never, till after Wearing, and then only while the Ships paſſed each other.

Q. Did you hear Captain *Bentley*'s Meſſage to Captain *Burriſh*?

A. I can't ſay.

Q. Did you hear either of the Lieutenants tell Captain *Burriſh*, there was no Powder filled?

A. No, I did not.

Q. Did you hear the Voice, that there was no Powder filled?

A. Yes; it was ſpoke from the Quarter-deck to the Boat.

Q. When Captain *Bentley* went away, did Captain *Burriſh* give any particular Orders, in relation to the Ship?

A. The Captain was conſtantly giving Orders; but I know not what ſuch Orders were.

Q. Had your Marines their Arms, when the Lieutenant came with the Meſſage?

A. I think not.

Q. Did Captain *Burriſh* appear to have any Signs of Fear, or did he ſeem to behave with Preſence of Mind, during the Action?

A. I did not obſerve any Signs of Fear in him, or that he ſeemed to want Preſence of Mind.

Q. Do you remember the Coming on board of the Boat from the Fireſhip?

A. Yes;

A. Yes; it was about Five o'Clock.

Q. How long did the *Dorſetſhire* diſcontinue Engaging, after the Boat came on board?

Q. I can't tell.

Q. Did you ever ſee the *Namur* upon your Lee or Weather-Bow, during the Engagement?

A. I ſaw her upon the Lee-Bow, till after the *Dorſetſhire* bore down, towards the latter End of the Engagement; and then ſhe became on the Weather-Bow.

Aſked by the Priſoner,

Q. Where did the *Spaniſh* Ship, aſtern of the *Spaniſh* Admiral, go to after ſhe bore away from the *Dorſetſhire?*

A. After ſhe bore away, ſhe went near to the *Real*, and fired at the *Marlborough*.

Q. Did you obſerve the *Dorſetſhire* edge after her, where ſhe ſo bore away?

A. I don't remember to have obſerved it.

Q. Did you obſerve any Shot that came over us?

A. Yes; ſeveral Shot came over us.

Q. When the Marines were ordered to fire, did they go voluntarily, or did Captain *Burriſh* force them?

A. I don't remember, that Captain *Burriſh* forced them.—They were drawn up in three Lines; and, after Captain *Burriſh* had ordered them to fire, I ſaid to him, We are too far: Upon which Captain *Burriſh* ordered them himſelf to fire; and afterwards upon my repreſenting to him, that they were at too great a Diſtance, Captain *Burriſh* ordered them to ceaſe Firing, and cauſed them to be employed about other Buſineſs in the Ship.

Q. Did not the Marines lie down one upon another?

A. No; they ſtooped, but they did not lie along.

Q. Do you remember, whether the Fireſhip hailed the *Dorſetſhire* firſt, or the *Dorſetſhire* the Fireſhip?

A. The Fireſhip hailed firſt; but what they ſaid, I know not.

Q. What was ſaid from us?

A. You aſked, If we could be of any Aſſiſtance; but I heard no Anſwer from the Fireſhip.

Q. Did the Fireſhip go directly to the *Real*? Or did ſhe go a roundabout Courſe?

A. She went to the Right, and then turned ſhort off to the *Real*.—By her Courſe, I did not think, at firſt, that ſhe was going to the *Real*.

Q. If the *Dorſetſhire* was at any time out of Action, what was ſhe then doing?

A. You were very active in mending and ſplicing the Rigging.

Q. Do you remember whether any of the Enemies Shot fell ſhort of the *Dorſetſhire*?

A. I did not obſerve any fall ſhort; but I ſaw many fly over her.

Q. Do you remember when the *Hercules* went quite off?

A. I can't ſay.

Q. How long did the *Dorſetſhire* lie out of Action, before ſhe began to fire again?

A. About Three Quarters of an Hour.

Q. What occaſioned her lying out of Action during that time?

A. I believe it was repairing the Rigging, and remounting the Guns.

The Court aſked,

Q. Was the *Marlborough*, at any time of the Engagement, between the *Dorſetſhire* and *Real?*

A. I can't ſay—I heard it reported, that ſome of the *Dorſetſhire*'s Shot ſtruck the *Marlborough* in Firing at the *Real*.

Priſoner asked,

Q. Where was the *Dorſetſhire* when the Fireſhip blew up?—Was ſhe near the *Marlborough?*

A. She was not then come up abreaſt of the *Marlborough*.

Q. Don't you remember our bearing down ahead of the *Marlborough*, and engaging the *Real?*

A. I don't remember it.

Q. How near did you paſs by the *Spaniſh* Ships after Wearing?

A. Within Piſtol-Shot.

Q. Did you then employ your Marines?

A. No;—they were then engaged about other Buſineſs in the Ship.

Then he withdrew.

Captain *Nucella*, late Lieutenant of the *Marlborough*, called in, and ſworn.

His Affidavit read, as follows; *viz.*

Captain Timothy Nucella, *late Lieutenant of his Majeſty's Ship* Marlborough, *maketh Oath.*

THAT he was Lieutenant on board the ſaid Ship on the 11th of *February*, 1743, which Ship was Admiral *Mathews*'s Second aſtern in the Engagement, that Day, off *Toulon* in the *Mediterranean*.

That *Thomas Mathews*, Eſq; was Commander in Chief of his Majeſty's Fleet in the *Mediterranean* Sea; and that, on the Morning of the 11th of *February*, he made a Signal for the Line of Battle ahead; and that at the ſaid time *George Burriſh* commanded his Majeſty's Ship *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, and Captain *Edmund Williams* the *Royal Oak*; which Ships appeared to be ſtationed in the Rear of the centre Diviſion of his Majeſty's Fleet, and were in Sight and View of the Signal aforeſaid: And that the Combined Fleets of *France* and *Spain*, about Noon of the ſaid Day, were about Two or Three Miles diſtant from the centre Diviſion of his Majeſty's Fleet: That, about Ten or Eleven o'Clock in the Morning of the ſaid Day, the ſaid Admiral made a Signal to engage the Enemy; and, between One and Two, he, together with the *Marlborough* and others of his Majeſty's Ships, began to engage and join

Battle

Battle with his Majesty's Enemies: That Captain *Burrish*, Captain *Ambrose*, and Captain *Williams* were in Sight of the said Signal, and the Engagement.

That Captain *Burrish*, Captain *Ambrose*, and Captain *Williams*, did not bear down equally with the Admiral and *Marlborough*; neither did they, or any of them, engage the Enemy as near as the Admiral or *Marlborough*; but kept to Windward of the Admiral and *Marlborough*, and to Windward of the Line of Battle.

That, from the Beginning of the Engagement till about Five o'Clock, all the Captains aforesaid were to Windward, and out of Gun-Shot, on Point-blank as he believes: That Captain *Williams*, who was the sternmost of the centre Division, was, during the said time, farther to Leeward than any Ship astern of the *Marlborough*: That they all had Wind sufficient to have gone nearer the Enemy; and that the *Dorsetshire* could have gone down and engaged the *Hercules*; and that the *Rupert* and *Royal Oak* could have gone down in a Line with the *Marlborough*; and the *Rupert* might have engaged the *Hercules* at a Distance; but there was no Ship for the *Rupert* and *Royal Oak* properly to have engaged, till towards the End of the Engagement.

That, during the Engagement, there was a great many Guns fired from the *Dorsetshire*, *Rupert*, and *Royal Oak*, when they were not within Gun-Shot of the Enemy, on Point-blank, as he believes.

That his Majesty's Ship *Marlborough* was hard pressed and engaged in Fight with his Majesty's Enemies; and the *Marlborough* had her Main and Mizen Masts shot away, and was in Danger of being destroyed by the Enemy; and that Captain *Burrish*, *Ambrose*, and *Williams*, were in Sight of the *Marlborough*'s Distress, and were respectively capable of yielding her Assistance; but whether Captain *Ambrose* and *Williams* might have done it without particular Orders, this Deponent can't say.

That neither the *Dorsetshire*, *Rupert*, or *Royal Oak*, did bear down, to yield the *Marlborough* the Assistance they might have done.

That, about Four o'Clock, the *Anne Galley* Fireship bore down towards the *Real*, in order to burn her; and that she was not covered by any Ship whatsoever.

That the *Dorsetshire*, *Rupert*, and *Royal Oak*, were in Sight and View of the said Fireship, and at hand ready to have covered her; and they neither of them were disabled.

That the Fireship was sunk by his Majesty's Enemies without Effect, for want of Assistance, as this Deponent believes.

Timothy Nucella.

Sworn before me this
17th *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the same to be true.

Q. At what Distance did the *Dorsetshire* engage the Enemy?

A. I believe she was not within point-blank Shot.

Q. Did the *Dorsetshire* ever come to the *Marlborough*'s Relief?—Did she bear down near enough to do Execution?

A. Never within point-blank Shot—I saw a shot fired ahead of the *Marlborough*, which I saw took Water under the Larboard Cat-head—though that might be from the Ship's taking a Sally—but I don't think she was then within point-blank Shot of the *Real*.

Q. Was the *Dorsetshire* the neareſt Ship to you?

A. Yes.

Q. Did you ever see her astern of you?

A. No.

Q. Was the *Dorsetshire* ever in a Line with the Admiral?

A. No—always to Windward till after the Admiral wore in the Evening—She engaged the *Hercules* at about Three Quarters of a Mile Distance.

Q. Did you observe any Damage done to her Masts or Sails, that might prevent her getting into the Line?

A. No, I could not observe any.

Q. Where was you quartered?

A. On the Lower-Gun-deck, till the Captain was killed; and then I went up upon the Quarter-deck and Poop.

Q. Did you command the *Marlborough* after Captain *Cornwall* was killed?

A. Yes.

Q. Did you make any Signal of Distress, when you was disabled?

A. No—we sent a Boat on board the Admiral.

Q. Did the *Dorsetshire* ever bear down to assist the *Marlborough*, after she lost her Masts?

A. She did bear down, but not near enough.

Q. How far was the *Real* to Leeward, when the *Dorsetshire* bore down?

A. About Two Cables Length—The *Marlborough*, after losing her Masts, fell off and astern; and the *Dorsetshire* engaged the *Real* ahead of her.

Q. Was the *Dorsetshire* engaged with the *Hercules*, when the *Marlborough*'s Masts were carried away?

A. Yes.

Q. How far was she then from the *Marlborough*?

A. About Half a Mile upon her Larboard-Quarter.

Q. How far was the *Hercules* from the *Marlborough*?

A. A Quarter of a Mile.

Q. Did you take notice when the *Hercules* bore away out of the Line?

A. No.

Q. What Ships were neareſt to have given Assistance to the *Marlborough* and Fireship?

A. The

A. The *Dorſetſhire* and *Eſſex.*

Q. Did you receive any Shot from the *Hercules?*

A. Yes.

Q. Did the *Dorſetſhire* give any Aſſiſtance to the *Marlborough?*

A. To be ſure ſome Aſſiſtance, when ſhe fired at the *Real* and *Hercules*; but not ſo much as ſhe might have given.

Q. When the *Dorſetſhire* came to your Aſſiſtance, did ſhe do the Service to your Ship, which a Ship of the King's ought to have done?

A. Her Firing at the *Hercules* muſt have been of ſome Service; but ſhe did not give the Aſſiſtance which a King's Ship ought to have given.

Q. Could the *Dorſetſhire* have given any Aſſiſtance to the Fireſhip?

A. Yes.

Q. Was there Wind enough then to command the Ships?

A. Yes.

Q. Did the *Dorſetſhire* never lie in a Line with the Admiral; and, if ſhe did not, do you know the Reaſon why?

A. She was not in a Line with the Admiral, but always to Windward—I can't tell why ſhe did not get into the Line—I did not obſerve ſhe had any Maſts hurt to render her unable.

Q. How far was the *Dorſetſhire* from the *Hercules* when you came upon the Poop, after the *Marlborough*'s Maſts were carried away?

A. About Three Quarters of a Mile—but I can't be certain as to the Diſtance—Without Point-blank.

Q. Did the *Dorſetſhire*'s Shot do you any Damage?

A. No.

Q. What time did the Fireſhip blow up?

A. About an Hour after the *Marlborough* loſt her Maſts.

Q. Where was you when the Fireſhip blew up?

A. Upon Deck.

Q. When you were hurt by the *Hercules*, was ſhe haul'd up into her Station?

A. Yes, cloſe to her Admiral.

Q. What Time did the *Marlborough* loſe her Maſts?

A. Between Two and Three o'Clock, according to my Journal.

Q. Did the *Dorſetſhire* bring to with the *Marlborough*, between her and the *Real?*

A. I believe the *Real*'s Quarter-deck could not be ſeen from the *Dorſetſhire*'s Quarter-deck.

Q. Was the *Real* as far to Windward as the other Ships in the Enemies Line?

A. Yes.

Q. Did the *Spaniards* keep their Line?

A. Yes.

Q. When you was engaged between Decks, did you ſee the *Dorſetſhire*'s Poſition?

A. I ſaw her out of the Larboard Stern-port, and then ſhe bore upon the *Marlborough*'s Larboard-Quarter.

Q. If the *Dorſetſhire* had bore down between the *Marlborough* and *Real*, would ſhe have run any Danger of being cut off by the *Spaniſh* Ships aſtern coming up?

A. I believe thoſe Ships could have weathered the *Marlborough*; they were then ſtemming directly towards her.

Q. How many *Spaniſh* Ships were there aſtern after the *Spaniſh* Admiral?

A. I think there were but Five *Spaniſh* Ships aſtern of the *Spaniſh* Admiral; the *Hercules*, and the Four that were coming up; and there were Four of our Ships to Windward.

Q. When the *Dorſetſhire* bore down, after the *Marlborough* had loſt her Maſts, were the three ſternmoſt Ships, of the Centre Diviſion, nearer to the *Marlborough*, at that time, than the Four or Five ſternmoſt *Spaniſh* Ships coming up were?

A. I think the *Eſſex* and *Rupert* nearer; but am doubtful, as to the *Royal Oak.*

Q. Do you think any of thoſe Four or Five *Spaniſh* Ships coming up, could have fetched our Ships aſtern of the *Dorſetſhire?*

A. They could have fetched the *Marlborough.*

Q. What Diſtance were they off, when you loſt your Maſts?

A. They were a good Diſtance off, but I cannot ſay how far.

Q. Which was the Leewardmoſt Ship, of our Ships aſtern of the *Marlborough?*

A. The *Royal Oak.*

Q. Could our Four Ships to Windward have engaged the Four *Spaniſh* Ships, coming up, had they bore down?

A. I believe they could.

Q. If the Four Ships aſtern of the *Marlborough* had bore down equally with the *Marlborough*, and as far to Leeward, would they not have been in a proper Poſition to have received and engaged the ſternmoſt *Spaniſh* Ships, at a proper Diſtance, as they came up?

A. To be ſure they would.

Q. Do you remember to have ſeen the *Dorſetſhire* cloſely engaged, after ſhe bore down?

A. I think after ſhe bore down the laſt time, ſhe might have been within Point-blank.

Asked by the Priſoner,

Q. After the Engagement began, Was you right aſtern of the *Namur*, or was you nearer the *Real*, than the *Namur* was?

A. We were rather nearer the *Real.*

Q. Did you ſee the Admiral?

A. Yes, on the Lee-Bow, upon the *Marlborough*'s Bringing up, but not after Engaging.

Q. When you came upon Deck, how did ſhe bear?

A. Upon the *Marlborough*'s Weather-Bow.

Q. After your Maſts were gone, did not the *Dorſetſhire* go ahead of you, and fire at the *Real?*

A. Yes, ſhe did fire, but not within Point-blank.

Q. Had the *Real* bore away to Leeward from the *Dorſetſhire*, before the Fireſhip came down, or afterwards?

A. She bore away while the Fireſhip was coming down.

Q. Was it the *Dorſetſhire* that beat the *Real* to Leeward, or the Fireſhip that forced her?

A. I believe it was the coming down of the Fireſhip.

Q. Was the *Dorſetſhire* to Windward or Leeward of the *Marlborough*, when the Fireſhip blew up?

A. I can't tell.

Q. Do you remember the Five Sail coming up?

A. Yes, very well.

Q. Before the Admiral wore, Did they haul their Wind again, after Edging away?

A. I can't remember.

Q. Did the *Marlborough* make any Signal of Diſtreſs, during the Action?

A. No.

Q. Was there any from the *Namur?*

A. Not that I ſaw.

Q. For what Reaſon did the *Namur* haul up to Windward?

A. I don't know.

Q. If the *Marlborough* had laid upon the *Real*'s Quarter, aſtern of the *Namur*, and not forced her ahead, would they not have beat the *Real?*

A. Yes, doubtleſs.

Q. How far was the *Marlborough* to Leeward of the Admiral?

A. Very little.

Q. How far was the *Dorſetſhire* to Windward of the *Marlborough?*

A. About a Quarter of a Mile.

Q. Was the *Dorſetſhire* more upon the *Marlborough*'s Weather-Quarter, than the *Namur* was upon her Weather-Bow?

A. Yes, ſomething more.

Then he withdrew.

John Baptiſta, Pilot of the *Marlborough*, called in, and ſworn.

His Affidavit was read, as follows; *viz.*

John Baptiſta, *Pilot of the* Marlborough, *maketh Oath*;

THAT he was Pilot on board his Majeſty's Ship the *Marlborough*, in the *Mediterranean*, in the Month of *February*, 1743, in the Fleet commanded by *Thomas Mathews*, Eſq; of which *Richard Leſtock*, Eſq; was Vice-Admiral, and *William Rowley*, Eſq; Rear-Admiral, under the Command of the ſaid Admiral *Mathews*.

That, about 9 or 10 o'Clock in the Morning of the 11th of *February*, 1743, he the ſaid Admiral *Mathews* made a Signal for the Fleet to form in Line of Battle ahead: That Captain *Burriſh* commanded the *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, Captain *Williams* the *Royal Oak*, Captain *Pett* the *Princeſſa*, and Captain *Sclater* the *Somerſet*; and were all ſtationed in the Centre Diviſion.

That all the above Ships, except the *Royal Oak*, who came into the Fleet a ſmall time before the Engagement hereafter-mentioned, were in Sight and View of the ſaid Signal; and that the Admiral, with the Centre Diviſion, were about Four or Five Miles from the Combined Fleet: That, about half an Hour paſt Ten o' Clock, Signal was made to engage, and all the Captains were in View of ſuch Signal; and, about One o' Clock, the Admiral bore down to engage the Enemy.

That, from the Beginning to the End of the Engagement, the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, were upon the Weather-Quarter of the *Marlborough*; and, as he believes, out of Gun-ſhot on Point-blank.

That the *Marlborough* was hard preſſed, and diſabled, having loſt her Main and Mizen Maſts, and was in Danger of being deſtroyed by the Enemy: That the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, were capable of yielding Aſſiſtance to the *Marlborough*; but they nor either of them did.

That, between Four and Five o'Clock in the Afternoon, the *Anne* Galley Fireſhip bore down towards the *Real*; and ſhe was not covered or conducted by any of his Majeſty's Ships: And that the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, might have gone down with her, and covered her: And that they were not ſo engaged, but that they might have ſo done, but did not.

That, if the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, or either of them, had bore down with the Fireſhip, he verily believes they would, in all Probability, have ſecured her Succeſs; and if all Four, or Two, or more of them, had ſo bore down, they would have ſtopt the ſternmoſt Ships of the Enemy from getting ahead, until the Vice-Admiral and his Diviſion could have come up.

J. Bautt. O. Lario y Roſa.

Sworn before me, this
6th *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. What Religion are you of?

A. I conſider myſelf as a Proteſtant, tho' I never abjured the *Roman Catholick* Religion. I was born at *Minorca*.

Mr. *Sharpe* (one of the Proſecutors for the Crown) was asked, ſuppoſing *Baptiſta* to be a *Roman Catholick*, Whether that would be an Objection, in the Law-Courts, to his being an Evidence?

And Mr. *Sharpe* ſaid, He conceived it would be no Objection, in any Court in *England*.

Q. Relate what you know of the Engagement.

A. Juſt before the Admiral bore down upon the *Real*, he called from his Stern-Gallery to Captain *Cornwall*, who went upon the *Marlborough*'s

borough's Forecaſtle; and the Admiral asked, What he thought? To which Captain *Cornwall* replied, He believed they ſhould loſe the Glory of the Day, if they did not attack the *Spaniards*, the Vice-Admiral being ſo far aſtern. To which the Admiral ſaid, If you'll bear down, and attack the *Real*, I'll be your Second. Upon which, the *Marlborough* and *Namur* bore down; and the *Namur*, falling a long-ſide of the *Real*, began to engage her, by giving her a Broadſide. I then obſerved a Smoak from the Admiral's Poop, as tho' ſomething blew up; and ſoon after the *Marlborough*, running up along-ſide the *Real*, began to engage her, the Admiral ſhooting ahead.

Q. Did the *Dorſetſhire* bear down into the Line?

A. Yes, I believe, after the *Marlborough*'s Maſts were gone. I did not mind after the Captain was ſhot; I had ſomething elſe to mind. Before that, the Captain deſired me to ſee, if any of the Ships upon the Weather-Quarter bore down; but none of them bore down.

Q. Did not the *Dorſetſhire* come to your Aſſiſtance?

A. No.

Q. Did the *Marlborough* receive Injury from the *Hercules?*

A. Yes, very much, in the Starboard-quarter, Quarter-deck, Galleries, *&c.*

Q. Did none of the Four ſternmoſt Ships come up to aſſiſt the *Marlborough?*

A. No.

Q. What Ship did moſt Damage to the *Marlborough*, the *Hercules*, or *Real?*

A. The *Hercules*, I believe.

Q. Would not the *Dorſetſhire*'s bearing down have been of Aſſiſtance?

A. Yes; it would have occaſioned the *Real* to have ſtruck.

Q. Had the Ships Steerage-way?

A. Yes, at the Time the Admiral ſhot ahead, they might go about a Knot and an Half.

Q. Did the *Dorſetſhire* give no Aſſiſtance? And was ſhe the next Ship to you, when you looked?

A. She was the next Ship; but gave no Aſſiſtance.

Q. Did you ſee none of our Ships engage the *Hercules?*

A. No.

Q. What Duty did Captain *Cornwall* appoint you to?

A. To look at the Ships upon the Weather-Quarter.

Q. Which was the neareſt Ship to you, when you looked?

A. The *Dorſetſhire* was the neareſt.

Q. How near did you engage?

A. Within about Two Thirds of a Cable's Length.

Q. What Diſtance was the *Dorſetſhire* from the *Marlborough?*

A. I obſerved, at the Beginning of the Engagement, that the Enemy's Shot reached about as far as the *Dorſetſhire:* But afterwards, during the Engagement, I believe the *Dorſetſhire* bore down nearer.

Q. Were the Guns of the *Real* pretty well ſilenced, when the *Marlborough*'s Maſts fell?

A. The *Real* left off Firing for about Five Minutes; but the *Hercules* continued her Fire. —The *Marlborough* left off Firing, till ſhe had cleared herſelf of the Wreck of the Maſts, and then ſhe renewed her Fire.

Q. What was the Reaſon the *Real* left off Firing upon you?

A. I believe they were in Confuſion on board her.

Q. What Time did the Fireſhip bear down?

A. Between Four and Five a Clock— And I ſaw the *Real*'s Launch with about Fifty Men in her.

Q. Did the *Dorſetſhire*'s Shot ever go over the *Marlborough*, till ſhe ſhot ahead? Did ſhe do you any Damage?

A. No: She never did us any Damage.

Q. Did the *Dorſetſhire* fire any Guns?

A. I believe ſhe did fire ſome; but I don't know at what Ship.— She fired at the *Real*, when the *Real* was bearing away— But I was very buſy, and can't give an Account of the latter Part of the Engagement.

Q. Did you ſee the *Dorſetſhire* engage the *Hercules?*

A. No— She did fire.

Q. Did you obſerve the *Hercules* break the Line?

A. Yes.

Q. Did you ſee her bear away during the Action?

A. I believe ſhe bore away, before their Admiral— But much about the ſame Time.

Q. What Ship of ours, aſtern of the *Marlborough*, was neareſt to the Enemy?

A. The *Dorſetſhire.*

Q. What was it forced the *Hercules* to bear away, and break the Line?

A. I believe it might be the *Dorſetſhire*'s Fire.

Q. Don't you think, if the *Hercules* had been cloſely engaged by the *Dorſetſhire*, it would have taken her Fire off the *Marlborough?*

A. Yes, doubtleſs.

Aſked by the Priſoner,

Q. Where did you ſee the *Dorſetſhire*, when the Fireſhip blew up?

A. I believe either to Leeward, or a little ahead of the *Marlborough.*

Q. How did your Ship then lay?

A. Her Maſts being gone, her Head was fallen off.

Q. Do you remember, before the Fireſhip blew up, whether the *Dorſetſhire* bore down to the *Real?*

A. Yes: I remember, ſhe fired ſome Guns

at

at the Real; but the *Real* bore away for fear of the Fireſhip, which was bearing down upon her.

Q. Where did the *Dorſetſhire* lie, to protect the *Marlborough* from the Five *Spaniſh* Ships coming up, at the Time of the Fireſhip's blowing up?

A. Juſt abreaſt, or rather to Windward.

Q. Did you run to Leeward, or right aſtern of the Admiral, when you began to engage?

A. We ran in to Leeward.

Q. Did you obſerve how the Four *Spaniſh* Ships went down, and whether they were in Line of Battle?

A. They were all together.

Q. Was the *Spaniſh* Admiral to the Southward, or did he bear to the Northward, when you bore down?

A. More to the Southward.

Q. When the Admiral bore down in the Morning; did his firſt Intention appear to you to be, to engage the *French* or *Spaniſh* Admiral?

A. He ſeemed to ſteer at firſt for the *French*, till he bore ſhort away for the *Spaniſh* Admiral.

Q. How far was Admiral *Mathews* from the *Spaniſh* Admiral, when he bore down ſhort upon him?

A. About a Mile.

Q. Was the *Dorſetſhire* in the Line at the Admiral's firſt bearing down?

A. She continued in the Line, till the Admiral bore ſhort down upon the Enemy; after which the Four Ships aſtern of the *Marlborough* ſeemingly kept in a Line with each other.

Q. What Diſtance was the Four *Spaniſh* Ships aſtern, from the *Hercules*, at the Beginning of the Action?

A. About Three Quarters of a Mile, or a Mile; and the *Hercules* the ſame Diſtance from the *Real*; and, after the Engagement began, ſhe made Sail to cloſe with the *Real*.

Q. How far was the headmoſt of thoſe *Spaniſh* Ships aſtern from the *Marlborough*, when the Fireſhip blew up?

A. The headmoſt of them fired at the Fireſhip, and the Shot went over her.

Q. Did you ſee any Boat go to the Fireſhip, to aſſiſt her?

A. No.

Q. Did you ſee the Fireſhip's Men in their Boat, or know where they went to?

A. I don't know.

Priſoner. It is pretty extraordinary, that this Witneſs could diſcern there was Fifty Men in the Launch, and yet could not ſee what became of the Fireſhip's Men.

Court aſked,

Q. In what Part of the Ship was you, after Captain *Cornwall*'s Death?

A. On the Quarter-deck.

Then he withdrew.

The Court adjourned till To-morrow Morning at Eight o'Clock.

The Second Day's TRYAL *of Captain* GEORGE BURRISH,

On Board His MAJESTY'S *Ship the* London, *at* Chatham,

THURSDAY, the 26th *September*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, who were Yeſterday.

The Priſoner was brought in by the Marſhal.

The Witneſſes were ordered to be called in.

Humphry St. Hill, Maſter's Mate on board the *Marlborough*, was called in, and ſworn.

And his Affidavit was read, as follows; *viz.*

Humphry St. Hill, *late Mate of his Majeſty's Ship the* Marlborough, *maketh Oath*,

THAT he was Mate of the ſaid Ship during the Month of *February*, 1743, in his Majeſty's Fleet in the *Mediterranean*, under the Command in Chief of Admiral *Mathews*.

That, in the Morning of the 11th of the ſaid *February*, a Signal was made for the Line of Battle ahead; and that Captain *Burriſh* commanded his Majeſty's Ship the *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, and Captain *Williams* the *Royal Oak*; and were reſpectively in Sight of the ſaid Signal, as this Deponent believes.

That the Combined Fleets of *France* and *Spain* were about Three or Four Miles diſtant from the Centre of his Majeſty's Fleet, and in a Line of Battle, when the ſaid Signal was made.

That about 11 o' Clock Admiral *Mathews* made the Signal to engage the Enemy; and, about One o' Clock, the Admiral, in the *Namur*, and the *Marlborough*, bore down upon, and engaged in Fight with his Majeſty's Enemies; and the *Marlborough* was diſabled, by having her Main and Mizen Maſts ſhot away, and was hard preſſed in the ſaid Engagement.

That the *Dorſetſhire*, *Rupert*, and *Royal Oak*, bore down with the Admiral, but not ſo far or ſo near the Enemy as he did, and not far enough to form the Line; and that they might have bore down nearer, and got into their Stations, there being Wind ſufficient for that Purpoſe,

poſe, if the Captains of thoſe Ships had thought proper.

That the *Anne* Galley Fireſhip bore down upon the *Real*, and was not covered or conducted by any of his Majeſty's Ships; and paſſed in Sight and View of the *Dorſetſhire*, *Eſſex*, and *Rupert*, who were at hand, ready to have conducted and covered her; which they might have done, and were then reſpectively to Windward of their Stations; and though ſhe paſſed very near the *Eſſex* and *Dorſetſhire*, yet ſhe had not any Aſſiſtance given her from them, or any other of thoſe Ships; and that ſhe was blown up without any Effect.

Humphry St. Hill.

Sworn before me, this 25th *Sept.* 1745;
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Was the *Dorſetſhire*, and the Three Ships ſtationed aſtern of her, in a Line?

A. They ſeemed pretty much in a Line at firſt; but afterwards they kept to Windward.

Q. When in a Line, were they under Sail?

A. Yes.

Q. Did the *Spaniſh* Admiral lie to?

A. No: — We engaged with Mizen Topſails aback.

Q. How long did you engage before you loſt your Maſts?

A. An Hour, to the beſt of my Remembrance.

Q. Did you want Aſſiſtance?

A. We did want Aſſiſtance; and I looked out for the Four Ships aſtern, who were not near enough to aſſiſt us: — The *Dorſetſhire*, the neareſt Ship of the Four, fired; but not near enough.

Q. Was the *Dorſetſhire* within point-blank Shot?

A. I believe ſhe could not reach the Enemy within Point-blank.

Q. Did ſhe not come nearer during the Engagement?

A. She was of very little Service to the *Marlborough*; ſhe did ſeem to edge down a little, and was the neareſt of the Four.

Q. Where was you quartered?

A. At the Fore-braces.

Q. Where did you ſtand, when you looked for thoſe Ships?

A. On the Forecaſtle; and ſaw them on the Larboard-Quarter, ſeemingly lafking down.

Q. How long did you engage before your Maſts were gone?

A. About an Hour.

Q. What Sail had the *Spaniſh* Admiral, and the *Marlborough*?

A. Their Topſails, Top-Gallant Sails, and Foreſail.

Q. What Sail had the *Dorſetſhire*?

A. Three Topſails: — I can't ſay, Whether ſhe had her Foreſail, or Top-Gallant Sails.

Q. Could the *Dorſetſhire* have been of any Aſſiſtance to the *Marlborough*? And could ſhe have bore down?

A. She having the Weather-gage, might have bore down, and given Aſſiſtance to the *Marlborough*.

Q. Did the *Dorſetſhire* continue engaging?

A. She kept a brisk Fire; and, the latter Part of the Engagement, was nearer to the Enemy; but did not annoy them, as ſhe might.

Q. Recollect: — Can you remember what Sail the *Dorſetſhire* was under, when the *Marlborough* loſt her Maſts?

A. I can't be poſitive to any thing, but her Three Topſails.

Q. Was you ſent with a Meſſage from the *Marlborough* to the Admiral?

A. Yes: Lieutenant *Nucella* ſent me, to let the Admiral know the Diſtreſs of the *Marlborough*; and that, unleſs ſhe had ſome Aſſiſtance, ſhe muſt be taken by the Four *Spaniſh* Ships coming up aſtern. — The Admiral ſaid, I am wearing, and coming myſelf to her Aſſiſtance: He then ſaid, The Fireſhip is bearing down to the *Real*, and will want Aſſiſtance; and ordered me to go with my Boat to take out her Men: But, by the Time I got athwart the *Marlborough*'s Forefoot, the Fireſhip blew up; and then I was employed in towing the *Marlborough*'s Head round.

Q. Did the *Dorſetſhire* bear down ſufficiently to take off the Heat of the *Hercules*'s Fire from the *Marlborough*?

A. No, not ſufficiently.

Q. Did you obſerve the *Hercules* bear away out of the Line?

A. Yes, ſhe bore away when her Admiral did; I did not obſerve her to bear away before.

Q. Was the *Dorſetſhire* in a tolerable Line with the Admiral, before Bearing down?

A. Yes.

Q. What was the Occaſion of the *Real*'s Bearing away?

A. I believe, Damage, Loſs of Men, and ſeeing the *Anne Galley* Fireſhip coming down upon her.

Q. Did you obſerve, Whether any Ships were in the *Dorſetſhire*'s Way, ſo as to prevent her Bearing down?

A. The other Three Ships aſtern were to Windward of the *Dorſetſhire*.

Q. How near was the *Dorſetſhire* then to the *Hercules*?

A. I can't judge:—But, I believe, the latter Part of the Action, ſhe might have been within Point-blank.

Q. But what Diſtance was the *Dorſetſhire* from the *Hercules*, upon your looking out, when the *Marlborough* loſt her Maſts?

A. I believe, about a Mile.

Q. Was you between the *Dorſetſhire* and the Enemy?

A. Yes.

Q. Did you obſerve the *Dorſetſhire* ſhot ahead of you, ſo far as to be able to reach the *Real*?

A. I was very buſy, and did not obſerve it.

Q. Did the *Dorſetſhire*'s Shot oblige the *Real* to bear away?

A. I can't tell.

Q. What do you apprehend was the Occaſion of her Bearing away?

A. I believe the *Real* imagined, that the *Dorſetſhire*, and the other Three Ships, were coming up.

Q. Did you ſee the *Dorſetſhire* engage after?

A. I can't ſay that I obſerved any thing of her, after I returned from carrying Captain *Nucella*'s Meſſage to the Admiral.

Q. What Diſtance might the *Dorſetſhire* be from the *Marlborough*, when the *Marlborough* and Admiral bore out of the Line?

A. To the beſt of my Remembrance, about Half a Mile; — and a little to Windward.

Q. In what Poſition was the Enemies Fleet then? Were they in a Line?

A. Yes: — The *French* Admiral at a Diſtance ahead of the *Spaniſh* Admiral; and the Four *Spaniſh* Ships, coming up in a Line with the *Hercules*, were about Three Miles aſtern of the *Spaniſh* Admiral.

Q. Did you not expect, that the Four Ships aſtern of the *Marlborough* would have come to your Aſſiſtance?

A. Yes, we did expect it.

Q. When you bore down out of the Line, did you go before the Wind, or how?

A. Not right before the Wind; but the Wind was well upon our Larboard-Quarter.

Q. When the Admiral bore away, at what Rate might the Ships go?

A. About Two Knots and a Half.

Q. How far were the Four *Spaniſh*, aſtern of the *Hercules*, diſtant from you, when the *Marlborough* loſt her Maſts?

A. They then appeared to be Three or Four Miles diſtant.

Q. Did the *Dorſetſhire* bear away with the Wind upon the Quarter, as you did?

A. I can't ſay: — I did not obſerve thoſe Four Ships aſtern of the *Marlborough*, till the *Marlborough*'s Maſts were gone.

Q. In what Situation was the *Dorſetſhire* then?

A. Laſking down, and edging upon the *Marlborough*'s Larboard-Quarter.

Q. Did you obſerve the *Hercules*'s Sails ſhot; and from what Ship do you think they were ſhot?

A. I apprehend from the *Marlborough*'s Stern-Chace.

Q. As the *Marlborough*'s Guns could bear upon the *Hercules*'s Bow, ought not the *Dorſetſhire* to have been abreaſt of the *Hercules* to be in her Station?

A. Yes.

Q. Do you think the *Dorſetſhire* was near enough to the *Hercules*, to damage her Sails?

A. I believe, not near enough to annoy her.

Q. Do you imagine ſhe was within point-blank Shot?

A. She was within random Shot, till the latter Part of the Action.

Q. What Diſtance was the *Dorſetſhire* from the *Hercules*?

A. About a Mile, or a Mile and an Half.

Q. Was the *Dorſetſhire* ever near enough, during the Action, to do Service?

A. Not much.

Q. Was ſhe of any Aſſiſtance to the *Marlborough*?

A. I can't ſay ſhe was of much Aſſiſtance.

Q. Did ſhe make the beſt of her Way to give you Aſſiſtance?

A. She ſeemed to bear down.

Q. Did the *Hercules*'s Bow-Guns keep annoying you, till the *Real* and ſhe both bore away?

A. Yes.

Q. When you was on board the *Namur*, how did the *Namur* bear from the *Marlborough*? And how did the *Dorſetſhire* bear from her?

A. The *Namur* about a Mile upon her Weather-Bow; and the *Dorſetſhire* about a Mile upon her Weather-Quarter.

Q. What was the Occaſion of the Admiral's being on the Weather-Bow?

A. Some time after we began to engage, the Admiral ſprung his Luff; and afterwards fired his Stern Chace, upon the *Real*, and continued upon the *Marlborough*'s Weather-Bow.

Asked by the Priſoner,

Q. Could you diſtinguiſh the Shot that fell ſhort of the Enemy, whether they came from the *Dorſetſhire*, or the Ships aſtern of her, and to Windward?

A. I can't ſay.

Q. How far will a Shot go to do Execution?

A. Better than a Mile.

Q. When the Fireſhip blew up, Where was the *Dorſetſhire*?

A. To Leeward of the other Three Ships; and neareſt to the *Marlborough*.

Q. As you went on board the *Namur* for Aſſiſtance, Did you call on board the *Dorſetſhire*?

A. No.

Q. Was there any other Officer ſent from the *Marlborough*?

A. The Lieutenant of the *Marlborough* went in a Boat from her; but I can't ſay whither.

Q. Did you ever fire upon the *Real* after ſhe bore away?

A. Yes, — and we were to Leeward of the *Dorſetſhire*, to the beſt of my Judgment.

Q. Did you obſerve the *Dorſetſhire*, at the time the Fireſhip was bearing down? What was her Poſition, and Diſtance from the *Marlborough*?

A. I think ſhe was to Windward — I don't know her Diſtance.

Q. When you towed to Windward, Did you obſerve, whether you towed to Windward, or to Leeward of the *Dorſetſhire*?

A. I can't be certain.

Q. Did you never obſerve the *Dorſetſhire* to be upon the *Marlborough*'s Lee-Bow?

A. I can't ſay I did.

Then he withdrew.

Richard Hamilton (Boatſwain of the *Namur*) called in, and ſworn.

His Affidavit read, as follows:

Richard Hamilton, *late Boatſwain of his Majeſty's Ship the* Namur (*on board which Ship Admiral* Mathews *hoiſted his Flag*) *at the late Engagement between his Majeſty's Fleet and the Combined Fleet of* France *and* Spain, *off of* Toulon, *in the* Mediterranean *Sea, on the* 11*th Day of* February 1743, *maketh Oath*;

THAT on the Morning of the aforeſaid Day, Admiral *Mathews* made Signal to engage the Enemy: That he and Rear-Admiral *Rowley* bore down, and engaged the Combined Fleets with ſeveral of his Majeſty's Ships: That at the time of making that Signal, Captain *Burriſh*, Commander of his Majeſty's Ship the *Dorſetſhire*, was ſtationed the Second Ship aſtern of the Admiral; Captain *Ambroſe*, Commander of his Majeſty's Ship the *Rupert*, the Fourth Ship aſtern of the Admiral; Captain *Williams*, Commander of his Majeſty's Ship the *Royal Oak*, the Fifth Ship aſtern of the Admiral: That the ſaid Captains were in Hearing and Sight of the ſaid Signal.

That the ſaid Ships *Dorſetſhire*, *Rupert*, and *Royal Oak*, bore down towards the Enemy during the Engagement, and, as he apprehends, within point-blank Shot during Part of the Engagement, but not in a Line with the Admiral, as he knows, but kept to Windward of the Line, till the *Namur* wore, which was towards the Evening: That, during the Engagement, there was Wind ſufficient for them to have bore down, and engaged in their Station, as near as the Admiral or *Marlborough* did, in this Deponent's Opinion.

That he ſaw the *Dorſetſhire* fire a great Number of Shot; and believes ſhe was within point-blank Shot; but did not obſerve any Shot from the *Rupert*, or *Royal Oak*.

That his Majeſty's Ships *Namur* and *Marlborough* were engaged, and hard preſſed by the Enemy; and the *Marlborough* was diſabled, having loſt her Main and Mizen Maſts, and was in ſome Danger of being deſtroyed by the Enemy, had not the *Namur* gone to her Aſſiſtance; and Captain *Burriſh* was in Sight of the Diſtreſs of the *Marlborough*, and was capable of yielding Aſſiſtance to the *Marlborough*, to his Opinion.

That, during the Engagement, a Signal was made by the *Anne-Galley* Fireſhip, to bear down upon the Enemy; ſoon after which a Boat was ſent to her with a Lieutenant; and thereupon ſhe bore down, but was not covered or conducted by any Ship: That the *Dorſetſhire* was in Sight and View of the Fireſhip, and was capable of covering her in all Appearance; and that Captain *Mackey* paſſed cloſe ahead of the *Dorſetſhire*, and that ſhe was ſunk or deſtroyed without Effect.

That, during Part of the Engagement, his Majeſty's Ship the *Princeſſa*, commanded by Captain *Pett*, was out of the Line, and to Windward.

Richard Hamilton.

Sworn this 31ſt *Auguſt*, 1745, before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Did the *Dorſetſhire* bear down with the *Namur* and *Marlborough*?

A. She did not, but lay to Windward the whole Time of Engagement, tho' Boats were ſent to her.

Q. What Ship was ſhe in Point-blank of?

A. The *Real* (if any)—She lay to Windward, and ahead of the *Marlborough*, and fired at the *Real*.

Q. Did the *Dorſetſhire*'s Shot do Execution, on either the *Real* or *Hercules*?

A. I don't believe they did.

Q. What Diſtance was ſhe off?

A. I don't know—I can't ſpeak as to Diſtances.

Q. Did you obſerve her Fire between the *Namur* and *Marlborough*?

A. Yes—She was to Windward, and ahead of the *Marlborough*.

Q. When the Signal was made, Did the *Dorſetſhire* keep in a Line with the Admiral?

A. I believe ſhe did, at laſt—But ſhe did not bear down with the Admiral.

Q. Where was you quartered?

A. Fore and aft, upon Deck.

Q. What Diſtance were the *Namur* and *Marlborough* aſunder?

A. Three Ships Length, or more.

Q. Did the *Dorſetſhire* do your Ship any Damage?

A. No.

Q. Did you obſerve the *Dorſetſhire*'s Firing between the *Namur* and *Marlborough* to be of any Continuance?

A. I obſerved it only while the Boats were paſſing between the *Namur* and *Marlborough*.

Q. Was the *Dorſetſhire* ſo far diſtant from the *Marlborough*, when ahead of her, that ſhe could wear, and get into her Station, without falling on board the *Marlborough*?

A. I think ſhe could.

Q. At what time did you obſerve the *Dorſetſhire* to be ahead of the *Marlborough*?

A. Both before and after her Maſts were gone.

Q. Do you believe, that, during the time of Engaging, your Ship or the *Marlborough* received any Aſſiſtance from the *Dorſetſhire*?

A. I don't think—they did.

Q. Did you obſerve where the *Dorſetſhire* was, when the *Marlborough* loſt her Maſts?

A. No.

Q. Do you believe the *Dorſetſhire* did aſſiſt the *Marlborough*, by going down?

A. I don't remember ſhe was any nearer, than I have already ſaid.

Q. How near do you think ſhe was at any time to the Enemy?

A. I can't ſay—Her Shot fell ſhort between us and the *Marlborough*.

Q. Did thoſe Shot come from the *Dorſetſhire*, or from the Ships to Windward of her?

A. I don't know, that there was any Ships to Windward of her.

A printed Plan of the Engagement was ſhewn to him, to ſee if he could judge thereby of the Situation of the Ships; and from which thoſe Shot might come—But the ſhewing any Draughts to the Witneſſes being objected to, the Court agreed it was improper, and the Plan was taken away.

Q. Do you believe the *Dorſetſhire* was of any Aſſiſtance, either by engaging the Enemy, or covering the Fireſhip?

A. I don't believe ſhe was.

Aſked by the Priſoner,

Q. Did you obſerve where the *Dorſetſhire* was, when the Fireſhip was going down to the *Real?*

A. She was then on the Weather-Bow, and well to Windward of the *Marlborough*.

Q. At what Diſtance?

A. I can't tell.

Q. Did you ever ſee the *Dorſetſhire* engage the *Real?*

A. I ſaw ſome Shot fired, but can't ſay whether they hit.

Q. Did you obſerve the *Dorſetſhire* bear down?

A. I did not—She was upon the *Marlborough*'s Weather-Quarter, and always to Windward of us.

Q. Did you ſee the *Dorſetſhire*, when the *Marlborough*'s Maſts were ſhot away?

A. I did not ſee her juſt then.

Q. How many Ships did you ſee aſtern of the *Dorſetſhire?*

A. The *Eſſex* only, and ſhe on the *Dorſetſhire*'s Lee-Quarter.

Q. Do you remember what *Spaniſh* Ships were aſtern of the *Real?*

A. No—I remember only one Ship aſtern of her.

Q. Did you not ſee Four Sail of *Spaniſh* Ships coming up?

A. Yes—We received their Fire.

Q. Did you ſee them when you firſt engaged?

A. No.

Q. When you wore, Did you go to Windward or Leeward of the *Dorſetſhire?*

A. We went to Leeward.

Q. Was the *Dorſetſhire*, or *Marlborough*, then neareſt the Enemy?

A. The *Marlborough*.

Q. Did you go to Windward or Leeward of the *Real?*

A. I can't be certain.

Q. Did the *Dorſetſhire* wear after the Admiral?

A. I don't know.

Then he withdrew.

Edward Miller (Gunner of the *Namur*) called in, and ſworn.

His Affidavit read, as follows:

Edward Miller, *Gunner of his Majeſty's Ship the* Namur, *on board which Ship Admiral* Mathews *hoiſted his Flag at the late Engagement between his Majeſty's Fleet and the combined Fleet of* France *and* Spain *off of* Toulon *in the* Mediterranean *Sea, on the Eleventh Day of* February, 1743, *maketh Oath;*

THAT, on the Morning of the aforeſaid Day, Admiral *Mathews* made the Signal to engage the Enemy: That he and Rear-Admiral *Rowley* bore down, and engaged the Combined Fleets, with ſeveral of his Majeſty's Ships: That, at the Time of making that Signal, Captain *Burriſh*, Commander of his Majeſty's Ship the *Dorſetſhire*, was ſtationed the Second Ship aſtern of the Admiral; Captain *Ambroſe*, Commander of his Majeſty's Ship the *Rupert*, the Fourth Ship aſtern of the Admiral; and Captain *Williams*, Commander of his Majeſty's Ship the *Royal Oak*, the Fifth Ship aſtern of the Admiral: That the ſaid Captains were in Hearing and Sight of the ſaid Signal.

That the ſaid Ships *Dorſetſhire*, *Rupert*, and *Royal Oak*, bore down towards the Enemy during the Engagement; but, as he apprehends, not within point-blank Shot during Part of the Engagement, nor into a Line with the Admiral, as he knows; but kept to Windward of the Line, till the *Namur* wore; which was towards the Evening: That, during the Engagement, there was Wind ſufficient to have bore down, and engaged in their Station, as near as the Admiral or *Marlborough* did.

That his Majeſty's Ships *Namur* and *Marlborough* were engaged, and hard preſſed by the Enemy; and the *Marlborough* was diſabled, having loſt her Main and Mizen Maſts; and was in ſome Danger of being deſtroyed by the Enemy, had not the *Namur* gone to her Aſſiſtance; and Captains *Burriſh*, *Ambroſe*, and *Williams*, were in Sight of the Diſtreſs of the *Marlborough*, and were capable of yielding Aſſiſtance to the *Marlborough*, had they bore down; but they did not.

Edward Miller.

Sworn this 31ſt of *Auguſt*, 1745, before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Did

Q. Did you ſee the *Dorſetſhire* the whole Engagement?

A. I did not ſee her the whole time of the Engagement. I only ſaw her twice within the Space of Four or Five Minutes; and ſoon after we were forced ahead by the *Marlborough*, and then her Shot fell ſhort of the Enemy, as did the Enemy's of her; and ſhe was not then within point-blank Shot, which I take to be Half a Mile; but ſhe might be within Point-blank after.

Q. Where was you then, when you ſaw her?

A. Upon the Lower-deck, and ſaw them out of one of the Quarter and Stern-ports—I was only once upon Deck, for a few Minutes, during the Engagement, and then I did not obſerve any of the Ships.

Q. How did the *Dorſetſhire* then bear from you?

A. Upon the *Namur*'s Larboard-Quarter—To Windward of the *Marlborough*, and aſtern withal.

Q. Was that before or after the *Marlborough*'s Maſts were gone?

A. I am not poſitive as to that.

Q. Were the *Marlborough*'s Maſts gone before you ſaw the *Dorſetſhire*?

A. I believe not.—No, they were not; for I ſaw her through the *Marlborough*'s Rigging, between the Main and Mizen Maſts.

Q. What Sail had the *Dorſetſhire* then?

A. I can't ſay.

Q. Was there Wind enough for the *Dorſetſhire* to bear down?

A. I believe there was.

Q. Was you to Windward or Leeward of the *Marlborough*, when you ſaw the *Dorſetſhire*?

A. We were to Leeward of her.

Q. Did you ſee the *Dorſetſhire* the latter Part of the Engagement?

A. No:—I ſaw her only for the Four or Five Minutes I have already mentioned.

Q. Did you ſee the Fireſhip bear down?

A. Yes:—The *Namur* bore down after her, and wore; the *Hercules* ſhot ahead, and the *Namur* engaged her for ſome time, and drove her out of the Line.

Q. What did you ſee of the Fireſhip?—Did you ſee her blow up?

A. No.

Q. Do you think it was the *Namur* drove the *Hercules* out of the Line?

A. Yes.

Q. What was the Reaſon of the *Real*'s Bearing away?

A. Our bearing down upon her.

Q. Did you ſee the *Dorſetſhire*, when you ſaw the Fireſhip?

A. No.

Q. Did the *Real* bear away before the Fireſhip came down?

A. No.

Aſked by the Priſoner,

Q. What Ship did you firſt engage?

A. The *Real*.

Q. How long did you engage her?

A. About an Hour and an Half, or Two Hours.

Court. Conſider you are upon your Oath; be as poſitive and exact as you can.

Witneſs. I am poſitive to an Hour and an Half.

Priſoner aſked,

Q. Why did you leave off engaging?

A. The *Marlborough* run her Bowſprit over the Larboard Taffarel, and obliged us to ſhoot ahead.

Q. Did you then haul your Wind?

A. No:—We rather went to Leeward of her, which brought us right ahead of the *Real*, and we fired our Stern-Chace at her.

Q. What time of the Action did you obſerve the *Hercules* to ſhoot ahead, and engage the *Namur*?

A. About the time the Fireſhip blew up.

Then he withdrew.

Maxwell Blackmore, Midſhipman on board the *Namur*, called in, and ſworn.

His Affidavit read; *viz.*

Maxwell Blackmore, *late Midſhipman, afterwards Maſter's Mate of his Majeſty's Ship* Namur, *maketh Oath*;

THAT he was a Midſhipman on board of the ſaid Ship during the Month of *February*, 1743, in his Majeſty's Fleet in the *Mediterranean*, under the Command in Chief of Admiral *Mathews*; and on board which Ship Admiral *Mathews* hoiſted his Flag.

That, in the Month of *February*, 1743, Admiral *Mathews* was Commander in Chief of his Majeſty's Fleet in the *Mediterranean*; and that Captain *Burriſh*, in his Majeſty's Ship *Dorſetſhire*; Captain *Ambroſe*, in his Majeſty's Ship *Rupert*; Captain *Williams*, in his Majeſty's Ship *Royal Oak*; Captain *Pett*, in his Majeſty's Ship *Princeſſa*; and Captain *Sclater*, in his Majeſty's Ship *Somerſet*; commanded the Ships in the Admiral's Diviſion; and were in Hearing and Sight of the Signal for the Engagement, as he believes, which was made in the Morning of the ſaid Month of *February*; and that Admiral *Mathews*, and Rear-Admiral *Rowley*, bore down, and engaged the Combined Fleets, together with ſeveral of his Majeſty's Ships.

That Captain *Burriſh* was not, as he apprehended, within point-blank Shot during any Part of the Engagement; nor in a Line with the Admiral, as he knows; but kept to Windward of the Line, till the *Namur* wore, which was towards the Evening; and that, during the Engagement, there was Wind ſufficient for them to have bore down and engaged in their Sta-

tion, as near as the Admiral or *Marlborough* did.

That he saw the *Dorsetshire* fire a great Number of Shot; and believes, they were not within random Shot; but did not observe any Shot fired from the *Rupert* or *Royal Oak*.

That a Lieutenant, in a Boat, was once or twice sent from the Admiral, to Captain *Burrish*, during the Engagement; but knows not the Message, or Answer.

That his Majesty's Ships *Namur* and *Marlborough* were engaged, and hard pressed by the Enemy; and the *Marlborough* was disabled, having lost her Main and Mizen Masts; and was in some Danger of being destroyed by the Enemy, had not the *Namur* gone to her Assistance: And the Captains *Burrish* and *Norris* were in Sight of the Distress of the *Marlborough*, and were capable of yielding Assistance to the *Marlborough*, had they bore down; but they did not.

M. Blackmore.

Sworn before me, this 18th *Sept.* 1745.

Cha. Fearne, Ju. Ad.

And he declared the same to be true.

Q. Where was you quartered?

A. On the Lower-Gun deck all the Time.

Q. What Distance was you from the *Dorsetshire* when you bore away?

A. I can't say; I did not see her.

Q. When did you see the *Dorsetshire*?

A. When the *Marlborough* forced the *Namur* ahead, I went upon Deck, and saw the *Dorsetshire*.

Q. When you shot ahead, did you haul off; and how much?

A. Yes: About Three Points and an Half, or Four Points.

Q. How often did you see the *Dorsetshire*? And was she within Gun-shot?

A. Not when I saw her, which was only at the Time I went upon Deck.

Q. How long did you engage before you hauled off?

A. About an Hour and an Half.

Q. What Guns did you engage with, after hauling off?

A. Our Stern-Chace; and always within Point-blank.

Q. What was the *Dorsetshire* doing when you saw her?

A. She was firing; but her Shot made Ducks and Drakes.

Q. What Sail had the *Dorsetshire* when you saw her?

A. She was under her Topsails.

Q. What Sails had the *Real*?

A. Her Three Topsails, when she began to engage.

Q. How long did you see the *Dorsetshire*?

A. About a Quarter of an Hour.

Q. Did you see the *Dorsetshire*, after the *Marlborough* lost her Masts?

A. Yes:—I saw her out of one of the Ports:—She was then on the *Namur*'s Weather-Bow.

Q. When the Fireship bore down, did you see the *Dorsetshire*?

A. Yes.

Q. In what Position was she then from the *Namur*?

A. Upon the *Namur*'s Weather-Bow.

Q. In what Position was she from the *Marlborough*?

A. To Windward, and rather ahead.

Q. Did you see the *Dorsetshire* fire between the *Namur* and *Marlborough*?

A. Yes; and many of her Shot fell short, making Ducks and Drakes in the Water.

Q. What Distance was the *Dorsetshire* then from the *Namur*?

A. About Three Quarters of a Mile.

Q. Could the *Dorsetshire* have wore, and gone down to assist the *Marlborough*?

A. She might have wore clear of the *Namur*'s Weather-Bow, and bore down to the Assistance of the *Marlborough*.

Q. You was firing your Stern-Chace?

A. Yes: We continued firing our Stern-Chace, after hauling off.

Q. What Distance was you then from the *Marlborough*?

A. The *Marlborough* was some Distance from the *Namur*, after the *Namur* hauled her Wind.

Q. Was there Wind enough for the *Dorsetshire* to bear down, and assist the *Marlborough*?

A. Yes: There was.

The Prisoner having no Questions to ask this Witness,

He withdrew.

Benjamin Jenkins, Midshipman of the *Namur*, called in, and sworn.

His Affidavit was read; *viz.*

Benjamin Jenkins, *late a Midshipman in his Majesty's Ship the* Namur; *on board which Ship Admiral* Mathews *hoisted his Flag, at the late Engagement between his Majesty's Fleet, and the Combined Fleet of* France *and* Spain, *off of* Toulon, *in the* Mediterranean *Sea, on the Eleventh Day of* February, 1743, *maketh Oath*;

THAT, on the Morning of the aforesaid Day, Admiral *Mathews* made the Signal to engage the Enemy: That he, and Rear-Admiral *Rowley*, bore down, and engaged the Combined Fleets, with several of his Majesty's Ships: That, at the Time of making that Signal, Captain *Burrish*, Commander of his Majesty's Ship the *Dorsetshire*, was stationed the Second Ship astern of the Admiral; Captain *Ambrose*, Commander of his Majesty's Ship the *Rupert*, the Fourth Ship astern of the Admiral; and Captain *Williams*, the Fifth Ship astern of the Admiral: That the said Captains were in Hearing and Sight of the said Signal.

That

That the ſaid Ships, *Dorſetſhire*, *Rupert*, and *Royal Oak*, bore down towards the Enemy during the Engagement; but, as he apprehends, not within point-blank Shot, during any Part of the Engagement; nor into a Line with the Admiral, as he knows; but kept to Windward of the Line, till the *Namur* wore; which was towards the Evening: That, during the Engagement, there was Wind ſufficient for them to have bore down, and engaged in their Station, as near as the Admiral or *Marlborough* did.

That he ſaw the *Dorſetſhire* fire a great Number of Shot, but believes ſhe was not within random Shot; but did not obſerve any Shot from the *Rupert*, or *Royal Oak*.

That his Majeſty's Ships *Namur* and *Marlborough* were engaged, and hard preſſed by the Enemy; and the *Marlborough* was diſabled, having loſt her Main and Mizen Maſts; and was in ſome Danger of being deſtroyed by the Enemy, had not the *Namur* gone to her Aſſiſtance; and Captains *Burriſh*, *Ambroſe*, and *Williams*, were in Sight of the Diſtreſs of the *Marlborough*; and were capable of yielding Aſſiſtance to the *Marlborough*, had they bore down; but they did not.

That, during the Engagement, a Signal was made for the *Anne Galley* Fireſhip to bear down upon the Enemy: Soon after which a Boat was ſent to her, with a Lieutenant; and, thereupon, ſhe bore down; but was not covered or conducted by any Ship: That the *Dorſetſhire* was in Sight and View of the Fireſhip, and was capable of covering her; and that Captain *Mackey* paſſed cloſe ahead of the *Dorſetſhire*; and that ſhe was ſunk or deſtroyed without Effect.

Benjamin Jenkins.

Sworn this 2d *Sept.* 1745,
before me,

Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was the *Dorſetſhire* when the *Marlborough* loſt her Maſts?

A. Upon her Weather-Quarter.

Q. What Diſtance?—Was ſhe within point-blank Shot?

A. I believe not:—I ſaw a great many Shot fall ſhort, both from her and the Enemy.

Q. Where was you quartered?

A. At the Braces.

Q. Did you never ſee the *Dorſetſhire* bear down?

A. I think I did, after the *Namur*'s Boat went to her; but I can't ſay how far.

Q. From which of the Enemy's Ships did the Shot come that fell ſhort?

A. I can't ſay whether from the Ship aſtern of the *Real*, or from the *Real*'s After-Guns.

Q. When the *Marlborough* loſt her Maſts, did you ſee the *Dorſetſhire*?

A. No.

Q. How long after you ſhot ahead, did the *Marlborough* loſe her Maſts?

A. About an Hour and an Half.

Q. How did you engage the *Real* after?

A. With our Stern-Chace.

Q. Did you ever ſee the *Dorſetſhire* cloſely engaged with the *Hercules*?

A. Yes:—But not cloſe enough; between point-blank Diſtance and random.

Q. Did you ſee the *Dorſetſhire* when the Fireſhip was going down?

A. I ſaw both the Fireſhip and *Marlborough* out of one of the Ports; and the *Dorſetſhire* was then to Windward of the *Marlborough*.

Q. Did you ſee her fire any Guns at the *Real*?

A. Yes:—But they fell ſhort, not being within random Shot.

Q. Did you ever obſerve the *Dorſetſhire* before your Beam?

A. I can't ſay.

Q. Did you ſee any Boat go on board the *Dorſetſhire*?

A. No.

Q. What Sail had the *Dorſetſhire* ſet?

A. I don't know.

Q. Had the *Dorſetſhire* Room to wear, and come into her Station to attack the Enemy?

A. She had.

Q. In what Poſition was ſhe?

A. Upon the *Marlborough*'s Weather-Quarter.

Q. Was you ever to Windward of the *Marlborough*?

A. Yes:—I think ſo.

Q. When the *Marlborough* came down under your Stern, did you ſhoot right ahead, or ſpring your Luff?

A. I can't tell.

Q. Did you obſerve the *Dorſetſhire* to edge far enough down to be of any Aſſiſtance to the *Marlborough* and *Namur*?

A. I ſaw her edge away; but, I think, not far enough to be of any Aſſiſtance.

Q. When you ſaw the *Dorſetſhire*, Did you obſerve the Enemy's Shot to fly over her?

A. I can't ſay:—But I ſaw ſome Shot fall ſhort; ſome might fly over her.

Aſked by the Priſoner,

Q. Do you remember where the Fireſhip paſſed you?

A. I think, under our Stern.

Q. Did ſhe paſs by the *Dorſetſhire*?

A. Yes.

Q. Do you remember any thing of the *Dorſetſhire*'s engaging the *Real* before the Fireſhip paſſed?

A. No.

Q. Do you remember the *Real* bearing away to Leeward?

A. Yes.

Q. Do you remember any thing of the *Dorſetſhire* at that time?

A. No.

Q. How

Q. How many Ships were aſtern of the *Spaniſh* Admiral?

A. I believe Four or Five; I can't ſay which.

Q. Do you remember, when the *Hercules* ſhot ahead of the *Real*, and fired at the *Namur*?

A. Before the Fireſhip bore down.

Q. Was it before, or after, the *Real* bore away?

A. Before—but I can't ſay, how long.

Q. At what Time did the Enemy's Ships come up, and engage?

A. Juſt after Wearing.

Q. Did you ſee any other Ships engage?

A. I can't ſay, that I ſaw any other Ships.

Q. Did you obſerve the Fireſhip go down?

A. Yes.

Q. Did ſhe go down directly, or fetch a Sweep?

A. I think, ſhe bore down before the Wind.

Q. Had you commanded the Fireſhip, on which Side would you have gone to burn the *Real*?

A. On her Weather-ſide.

Q. Which was her Weather-ſide?

A. She had then bore away; and, I think, her Starboard-Quarter, was her Weather-Quarter, the Fireſhip's Larboard-ſide being neareſt to her.

Q. Did you the Enemy's Ships then coming up?

A. Yes.

Then he withdrew.

Captain *Marſh*, Commander of the *Winchelſea*, called in, and ſworn.

His Affidavit read; *viz.*

Captain William Marſh *maketh Oath*,

THAT, on the 11th of *February*, 1743, in the Engagement off *Toulon*, he was Commander of his Majeſty's Ship *Winchelſea*.

That, in the Morning of the ſame Day, Admiral *Mathews* made a Signal for the Line of Battle ahead; and, about Eleven o'Clock, he made a Signal to engage the Enemy.

That, about One o'Clock, the Admiral bore down, and engaged the *Spaniſh* Admiral.

That the *Princeſſa* and *Norfolk* ahead of the Admiral, and the *Marlborough* aſtern of the Admiral, bore down with him, and engaged the Enemy.

That, about Three o' Clock, the *Marlborough* was diſabled, having her Main and Mizen Maſts ſhot away.

That the *Dorſetſhire*, Captain *Burriſh*; the *Eſſex*, Captain *Norris*; the *Rupert*, Captain *Ambroſe*; and the *Royal Oak*, Captain *Williams*; were ſtationed aſtern of the *Marlborough*, in Admiral *Mathews*'s Diviſion.

That the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak* bore down when the Admiral did, but not ſo far, or ſo near the Enemy, as the Admiral did, nor far enough, as he believes, to form the Line; and that there was Wind ſufficient for them to have bore down in their Stations, and to have formed the Line.

W. Marſh.

Sworn this 3d *Sept.* 1745. before me,

Charles Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Did the *Dorſetſhire* bear down with the Admiral?

A. She did; but I think not ſo far as ſhe ought.

Q. In what Poſition was ſhe?

A. I think to Windward; but I can't ſpeak poſitively to her Poſition; for as I was directly to Windward of the Admiral, it is impoſſible for me to ſay poſitively, whether the Ships were in a direct Line, or to Windward or Leeward.

Q. Did the *Dorſetſhire* bear away?

A. Between Four and Five, ſhe looſed her Top-gallant Sails, dropt her Fore-ſail, and bore down (I think) to Leeward of the *Marlborough*.

Q. When did ſhe thus bear down?

A. I believe, while the *Namur* and *Marlborough* were engaged.

Q. What Ship did ſhe engage?

A. I believe, the Ship aſtern of the *Real*.

Q. Did you ſee the *Dorſetſhire* engage?

A. Yes: Smartly.

Q. At what Diſtance from the Enemy?

A. I do not know— It was impoſſible for me to judge of Diſtances of Ships that were to Leeward of each other, and to Leeward of me.

Q. How did ſhe bear down?

A. I am convinced ſhe kept the ſame Sail ſet, till ſhe run to Leeward of the *Marlborough*.

Q. Was it before or after the *Marlborough* loſt her Maſts?

A. After.

Q. What Diſtance was ſhe from the *Real*?

A. I can't ſay, for the Reaſon already given. — I ſaw the Shot come over the *Namur*.

Q. What Diſtance was you to Windward of the Admiral?

A. A ſmall Mile.

Q. Where was the *Dorſetſhire*, when the *Marlborough* loſt her Maſts?

A. I believe aſtern, or upon her Quarter.

Q. Did you think the *Dorſetſhire*, that Day, did her Duty, as became a *Britiſh* Man of War?

A. At firſt bringing to, ſhe brought to too much to Windward; but after ſhe looſed her Top-gallant Sails, and dropped her Fore-ſail, I believe, ſhe became then to Leeward of the *Marlborough*.

Q. At what Time was that?

A. Between Four and Five o' Clock, I believe.

Q. What Diſtance was you from the *Real*?

A. I don't know.

Q. Did the Enemy's Shot reach you?

A. Never.

Q. Was the *Spaniſh* Admiral bore away, when you obſerved the *Dorſetſhire* to Leeward of the *Marlborough?*

A. Yes: I believe ſo.

Q. What did the *Spaniſh* Admiral's Second then do?

A. I don't know.

Q. Do you remember any particular Ship's Signal to be made by the Admiral, during the Engagement?

A. I remember only one Signal, for the Fire-ſhip.

Q. When the *Dorſetſhire* firſt bore away, did ſhe bring to too ſoon?

A. She bore away, and brought to, I think, farther to Windward than the Admiral and *Marlborough* did.

Q. Did you ſee the *Dorſetſhire*, at any time, cloſely engaged?

A. I did ſee her cloſely engaged.

Q. You have ſaid, You are no Judge of Diſtances: Why do you think ſhe was cloſely engaged?

A. Becauſe ſhe was to Leeward of the *Marlborough*.

Q. Could you ſee the *Dorſetſhire?*

A. Yes; I ſaw her Hull.

Q. Did you ſee any Shot come over her?

A. I don't remember.

Q. What time did the Admiral bear away, or wear, in the Evening?

A. I believe, about Six o' Clock.

Q. Did you obſerve the Four *Spaniſh* Ships aſtern?

A. Yes.

Q. Do you think they could have weathered the *Dorſetſhire?*

A. I am not certain.

Q. How long did the *Dorſetſhire* cloſely engage?

A. I don't know:—I believe about Half or Three Quarters of an Hour, before the Admiral wore:— I am not certain.

Q. What Ship did ſhe engage?

A. I don't know.

Q. It is very ſtrange, that you could not ſee what Ship ſhe engaged with.

A. I can't ſay, whether it was the *Real* or *Hercules*.

Q. Could you ſee the *Real*'s Flag?

A. Yes.

Q. Where was our Three ſternmoſt Ships, when the *Dorſetſhire* engaged?

A. The *Eſſex* was to Windward, and too far ahead:— I believe the *Rupert* and *Royal Oak* were alſo to Windward.

Q. What might a Ship go at that Time?

A. I believe about Two Knots;— or Two Knots and a Half.

Q. Did the *Dorſetſhire* bear down at or about the Time of Wearing?

A. Before: — I believe about Half or Three Quarters of an Hour.

Q. At what o'Clock did your bear away?

A. I can't remember.

Q. Did you ever obſerve the *Dorſetſhire* ſhoot ahead of the *Marlborough?*

A. I believe ſhe did; and brought to, to Leeward of her.

Q. Do you think the *Dorſetſhire* was of Aſſiſtance to the *Marlborough*, by ſhooting ahead?

A. I can't tell.

The Court obſerving, that Captain *Marſh* could not ſpeak poſitively to ſcarce any thing, aſked him, If he had his Journal: The Judge-Advocate acquainted them, That he had brought that, which had been delivered in to the Admiralty-Office down with him: Upon which the Court called for that Part of it which related to the Engagement, to be read to them: Which was done accordingly, as follows, *viz.*

Feb. 1743-4. *Sunday* 12th MOderate and cloudy: Half paſt *P. M.* the Signal was made to engage, when the Admiral and *Malborough* bore down on the *Real* (the *Spaniſh* Rear-Admiral), and began the Engagement: Soon after the *French* Admiral, with Four Sail, began to engage Admiral *Rowley*, and his Seconds, the *Boyne*, and Princeſs *Carolina*; but, about Three, were obliged to make Sail, finding too warm a Reception: The *Marlborough* had her Main and Mizen Maſts ſhot away, ſhe having pretty much diſabled the *Real*: A Signal was made for the *Anne Galley* Fireſhip: During this time the *Podar* of 64 Guns being warmly plied by the *Berwick*, after a ſtout Reſiſtance, having her Maſts ſhot away, ſtruck to her. Soon after the Admiral, with the *Anne Galley* Fireſhip, and Four or Five Sail more, bore down upon the *Real*, who was very much diſabled; but the *Anne Galley*, by ſome unknown Accident (when near the *Real*), blew up without taking Effect: In the Interim the *Spaniards* cloſed their Line, and began a very warm Attack on the Admiral, and the Ships that went down with him, which continued till Sun; when the *French* Fleet, haveing tacked, ſtood in between our Ships and the *Spaniards*, who bore away under their Cover; about which Time Admiral *Leſtock*'s Squadron came up to form the Line: At Eight the Fleet brought to: At Four *A. M.* a Signal to tack: At Seven the *Burford* joined us. Saw the Admiral's Flag hoiſted on board the *Ruſſel*. At Ten the Admiral tacked, and made the Signal for the Line, the Enemy being ſtill in Sight, about Six or Seven Leagues Diſtance: The Admiral left the *Oxford* to take care of the *Marlborough*.

And then Captain *Marſh* being aſked, If he remembered what was contained therein to be true, he ſaid, He could not account at all for the Truth of it; neither Maſter or Mates having kept the Log that Day; but he ſigned it of Courſe, when it was brought to him by his Clerk. The Court expreſſed their Surprize to him, that he was not more cautious with regard to his Journal; and particularly,

that he did not take care to be well ſatisfied of what was therein related of the Engagement, although he might uſe leſs Caution with regard to common Occurrences.

Q. What Ships bore down with the Admiral in the Evening?

A. The *Princeſſa* and *Norfolk*, ahead; and the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, aſtern.

Q. Are you ſure the *Dorſetſhire* was to Leeward of the *Marlborough*?

A. I am pretty ſure ſhe was.

Q. In what Poſition did our Ships go down to engage?

A. I think in the Line abreaſt.

Aſked by the Priſoner,

Q. Do you remember, how the Fleet went down to engage the Enemy?

A. I think it was in a Line of Battle abreaſt.

Q. Was there any Alteration in that Line before the *Namur* and *Marlborough* engaged?

A. Yes: They were afterwards in a Line of Battle ahead.

Q. Was there any Alteration in the Line afterwards?

A. I don't remember.

Q. I mean, Was there any Alteration in the Poſition of the Ships afterwards?

A. Not—till Bearing away; when they all went down with their Sterns to me.

Q. Do you think it was the Admiral's Intention, upon his firſt going down, to engage the *Spaniſh*, or the *French*?

A. I don't know:—But by his Courſe in the Morning, I judged his Intention was to engage the *French*.—Afterwards, when he bore away, his Intention was plainly to attack the *Spaniards*.

Q. Were there any Ships aſtern of the *Real*?

A. One was near, and pretty well cloſed with the *Real*.

Q. Did you obſerve any Ship to engage that particular Ship?

A. I ſaw the *Dorſetſhire* fire; but I don't know at what Ship.

Q. Was it at the time the *Namur* and *Marlborough* engaged, that the *Dorſetſhire* fired?

A. It was, I think, preſently after.

Q. How bore the *Eſſex* from the *Dorſetſhire* then?

A. I believe upon her Larboard-Quarter.

Q. Could you diſtinguiſh the Diſtance between the *Dorſetſhire* and the Enemy?

A. I could not; the Enemy lying directly oppoſite to me.

Court aſked,

Q. Did you not uſe Pen and Ink, to take Minutes at the Time of the Engagement?

A. No: I declare it, I did not.

Q. Did you not, in your Situation, think it your Duty to make Obſervations of the Behaviour of the Ships; and acquaint the Admiral, if any miſbehaved?

A. I was ordered to obſerve and repeat the Admiral's Signals, which I did; but I was not directed to obſerve the Behaviour of the Ships.

Then he withdrew.

Lieutenant *Palliſſer*, of the *Eſſex*, called in, and ſworn.

His Affidavit read; *viz.*

Hugh Palliſſer, *late firſt Lieutenant of his Majeſty's Ship* Eſſex, *maketh Oath*;

THAT he was Lieutenant of the ſaid Ship, during the Month of *February*, 1743: And, on the 11th of the ſaid Month of *February*, the ſaid Ship was ſtationed the next Ship to the *Dorſetſhire*, and the Third aſtern of Admiral *Mathews*, in the Engagement that Day, off *Toulon*.

That the *Dorſetſhire*, Captain *Burriſh*; and *Rupert*, Captain *Ambroſe*; bore down towards the Enemy, when the Admiral did; but did not go down ſo far, or ſo near the Enemy, as the Admiral did, and not far enough to form the Line; and that they might have bore down as near as the Admiral and *Marlborough* did, there being Wind ſufficient.

That the *Dorſetſhire* began to fire, ſoon after the Admiral did, and continued firing, during the greateſt Part of the ſaid Engagement; but believes ſhe was not within point-blank Shot, till Mr. *Bentley* had been on board her from the Admiral, and the Fireſhip had been blown up; and then this Deponent believes, ſhe did not come within point-blank Shot, but that ſhe did not go into the Line with the *Marlborough*.

That the *Anne Galley* Fireſhip bore down upon the *Real*, and paſſed by, and in Sight of the *Dorſetſhire*, *Eſſex*, and *Rupert*, which Ships were at hand, ready to have conducted and covered her; and which they might have done, and were then reſpectively to Windward of their Stations; but neither of them did perform that Service.

That the *Marlborough* was diſabled in the ſaid Engagement, having her Main and Mizen Maſts ſhot away; and that the *Dorſetſhire* and *Eſſex* were ſtationed aſtern of her, but not in their Stations, and kept to Windward; and the *Rupert* was ſtationed the next Ship aſtern of the *Eſſex*; and if ſhe had bore away, and paſſed the *Eſſex* and *Dorſetſhire*, as ſhe might have done, ſhe might have aſſiſted and relieved the *Marlborough*, and covered the Fireſhip; but that ſhe did not do it, but kept to Windward of her Station, during all, or the greateſt part of the ſaid Engagement.

That, about an Hour after the Admiral began to engage, this Deponent ſaw the *Royal Oak* engaged with the Second of the Five ſternmoſt *Spaniſh* Ships, as he thinks; and ſhe was then to Leeward of the *Rupert*; and he judges within near point-blank Shot, which no

other Ship was; and then ſhe ſprung her Luff up, under the *Rupert*'s Stern.

Hugh Palliſſer.

Sworn before me, this 11th
Day of *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Lower-deck:— But was not all the time there.

Q. Relate what you know of the *Dorſetſhire?*

A. At firſt, when the Signal was made to engage, the *Dorſetſhire* was in a very good Line; and when the Admiral bore away, the *Dorſetſhire* did the ſame; when the Admiral ſprung his Luff, the *Dorſetſhire* did the ſame, upon the *Marlborough*'s Weather-Quarter: After the *Marlborough* was diſabled, and the Fireſhip was deſtroyed, the *Dorſetſhire* bore down nearer, and within a proper Diſtance to do Execution.

Q. Do you know what Ships fired at the *Dorſetſhire?*

A. I don't know:— But the *Hercules* and *Real* might have both fired at her:— After ſhe had bore down, I obſerved a great many Shot fall much to Windward of her.

Q. What Sail did the *Dorſetſhire* make, when ſhe bore down?

A. I think I ſaw her Topgallant-Sails, Top-Sails, and Fore-Sail.

Q. What Diſtance was ſhe to Leeward of the *Eſſex?*

A. A long Mile, after ſhe bore down.

Q. Was ſhe within Gun-ſhot, before ſhe bore down?

A. She was within random Gun-ſhot, — becauſe ſome of the Enemy's Shot flew over the *Eſſex*; which was to Windward of her.

Q. Was ſhe ever to Leeward of the *Marlborough?*

A. Yes, towards the Evening:—But though ſhe was to Leeward of the *Marlborough*, yet ſhe was not ſo near the Enemy as the *Marlborough* had been, becauſe the Enemy had bore away.

Q. Did the *Dorſetſhire* increaſe her Diſtance from you?

A. No,—We increaſed our Diſtance from her.

Q. How was the Wind, when you engaged the Enemy?

A. Abaft the Beam.—If our Ships had been in a Line with the Enemy, the Wind would allow of Luffing up Four or Five Points.

Q. What Ship did the *Dorſetſhire* engage?

A. The *Real*, or her Second, or both.

Q. Do you believe ſhe engaged both?

A. I believe, both fired at her.

Q. Did you ſee the *Dorſetſhire* on the *Marlborough*'s Weather-Bow?

A. I think ſhe paſſed a-head of the *Marlborough*.

Q. Did ſhe fire then?

A. Yes.

Q. Did you ſee any Alteration in the *Dorſetſhire*'s Poſition, after Captain *Bentley* went on board?

A. I did not ſee the Boat go on board her.

Q. When the *Dorſetſhire* bore away, with the Admiral, did ſhe make the ſame Sail as the Admiral did?

A. I can't ſay.—For juſt on their Bearing away, I went to my Quarters, in Expectation of Action.

Q. When the *Dorſetſhire* bore away afterwards, what was the Enemy doing?

A. The *Real* was going away, and her Second ſhot ahead; which gave the *Dorſetſhire* an Opportunity of engaging both.

Q. What was the Reaſon of the *Real*'s Bearing away?

A. I believe, the Fireſhip's Bearing down upon her.

Q. When the *Dorſetſhire* bore down, with the Admiral and *Marlborough*, did ſhe form the Line with them, when ſhe brought to?

A. No.—She brought to, when the *Namur* brought to:—And was upon the *Marlborough*'s Weather-Quarter.

Q. What was the fartheſt Diſtance the *Dorſetſhire* was from you, all the Time of the Engagement?

A. A Mile or a Mile and a Half to Leeward; which was juſt before Wearing.

Q. Do you think, when the Fireſhip blew up, that the *Dorſetſhire* was within point-blank Shot of the Enemy?

A. No:—I think no Ship was then within Point-blank; the Enemy having bore away, at the Time the Fireſhip blew up.—The *Dorſetſhire* was then the neareſt Ship to the Enemy.

Q. Was the *Dorſetſhire* to Leeward then of the *Marlborough?*

A. Yes.

Q. Was ſhe within Reach of Small-Arms, during the Engagement?

A. No.

Q. Was it in her Power to have been, at any Time, within Muſquet-ſhot?

A. Yes, at firſt ſhe might.

Q. Do you think the Wind was upon the Larboard or Starboard-ſide of the *Dorſetſhire*, during the Engagement?

A. Upon the Larboard-ſide.

Q. When was ſhe neareſt to the Enemy?

A. Juſt at the Time of Wearing.

Q. Did you obſerve the *Dorſetſhire* to fire, after Wearing?

A. I was buſy myſelf at my Quarters.—But as we paſſed the *Real* and *Spaniſh* Ships aſtern, we all fired.

Q. Was the *Dorſetſhire* within point-blank Shot, before the Admiral wore?

A. I think ſhe might be ſo, juſt before.

Q. How long was ſhe engaged, before the Admiral wore?

A. I believe about half an Hour.—I can't tell exactly.

Q. How far was the *Dorſetſhire* to Windward of the *Marlborough?*

A. About a Muſquet-ſhot, when the *Dorſetſhire* firſt ſprung her Luff.

The Priſoner aſked,

Q. How far was the *Hercules* aſtern of the *Spaniſh* Admiral, at firſt beginning to engage?

A. She was in a proper Station in the Line.

Q. How many *Spaniſh* Ships, beſides the *Hercules*, were there aſtern?

Q. Five in the Line.—There was a large Space between the *Hercules* and next Ship; the other Five were in a good Line with each other.

Q. Were they crouding Sail?

A. Yes.

Q. How long time might it be, before thoſe Five Ships could come up to engage the *Dorſetſhire?*

A. In a ſhort time;— for the headmoſt of them was near enough to the Fireſhip, to fire ſeveral Broadſides at her; and the Shot went over her.

Q. Do you think her Shot occaſioned the Fireſhip's ſinking?

A. Yes, I believe it might.

Q. Did any of their Shot go over the *Dorſetſhire?*

A. Yes, the Shot of the headmoſt of the Five.

Q. Did you obſerve the headmoſt of thoſe Ships to ſtem for the *Dorſetſhire?*

A. No.—When they came up, and fired at the Fireſhip, ſhe bearing down, they edged away to bring their Broadſides to bear upon her.—They all came up together in the Line, and all edged away in the Line, after their Admiral.

Q. Do you think the *Dorſetſhire* behaved like an *Engliſh* Man of War, during the Engagement?

A. I do not think ſhe did.

Q. Did you obſerve the *Namur* and *Marlborough* begin to engage, before the *Dorſetſhire?*

A. Yes, but ſhe engaged quickly after them.

Q. Did you obſerve what Sail the *Dorſetſhire* had ſet?

A. I don't certainly remember any thing of her Sails.

Q. What Diſtance was the *Eſſex* to the Windward of the *Dorſetſhire?*

A. About Half a Mile, at firſt.

Q. Did you obſerve the Enemy's Shot go over the *Dorſetſhire?*

A. Yes.

Q. Did they go over the *Eſſex?*

A. Yes.—They reached the *Eſſex*.—One Shot ſtruck her Side, dented it, and fell into the Water.—There were but few that did reach her.

Q. Did that Shot which ſtruck you, come over the *Dorſetſhire?*

A. I believe it might.

Q. How long did you obſerve the *Dorſetſhire* engage the *Hercules?*

A. She kept a continual Fire. I ſaw her many times, from firſt to laſt, and always ſaw her firing.

Q. Did you obſerve the *Hercules* receive any Damage from the *Dorſetſhire?*

A. I ſaw the *Hercules*'s Maintopſail-Yard, down upon the Cap; and her Foretopſail-Yard Half-Maſt down, hanging in the Slings.

Q. What Time of the Day was that?

A. I can't tell.—But it was before ſhe went under the *Real*'s Lee.

Q. Whether was that Damage received from the *Dorſetſhire*, or any other Ship?

A. I can't ſay, whether from the *Dorſetſhire* or *Marlborough*.

Q. Did you obſerve the *Dorſetſhire*, during the Engagement, to ſheer off, or edge nearer?

A. I perceived her nearer.

Q. Do you remember the Poſition of the *Dorſetſhire*, when Lieutenant *Bentley* went on board the *Eſſex?*

A. I can't tell.

Q. When Lieutenant *Bentley* returned from the *Eſſex* to the *Namur*, Did he not go a great Way to Windward of the *Dorſetſhire?* And did not the Enemies Shot fly over his Boat?

A. Yes.

Q. Did you obſerve the Situation of the *Dorſetſhire*, when the *Marlborough*'s Maſts were loſt?

A. No.

Q. Do you remember, when the *Dorſetſhire* bore away, whether ſhe went ahead or aſtern of the *Marlborough?*

A. I believe, ahead.

Q. Do you remember, Whether the *Dorſetſhire* was to Leeward of the *Marlborough*, after ſo Bearing down?

A. She was to Leeward of her.

Q. When ſhe had bore down ſo to Leeward, Did ſhe not engage the *Real?*

A. Yes.—She was firing upon the *Real.*

Q. Could you diſtinguiſh at what Diſtance?

A. I judge it might be within Point-blank; near enough to do Execution.

Q. Did you ſee the Fireſhip go down?

A. Yes.

Q. Did you ſee her go near the *Dorſetſhire?*

A. She went ahead of the *Eſſex*, and I believe aſtern of the *Dorſetſhire.*

Q. How long was it, after the Fireſhip blew up, that the *Namur* wore?

A. About Half an Hour.

Q. Did you obſerve the Five *Spaniſh* Ships coming up, fire at the Fireſhip?

A. The headmoſt of them did.

Q. Did thoſe Four Ships bear away before, or after, the *Real?*

A. Rather

A. Rather after.

Q. If they had not bore after their Admiral, but kept their Wind, as at firſt, Whether do do you think, they would not have weathered the *Dorſetſhire?*

A. I believe they would have fetched her.

Q. After the Fireſhip was blown up, and the *Real* out of Danger, Did the headmoſt, or any of them, haul their Wind, or continue on after their Admiral?

A. They continued edging away after their Admiral.

Q. Do you imagine, when the *Dorſetſhire* bore down to engage the *Real*, it was that occaſioned the *Real*'s Bearing away?

A. No:—I think ſhe bore away, upon the Fireſhip's Bearing down towards her.

Q. Did you not obſerve the *Dorſetſhire* engaged with the *Real*, before the Fireſhip bore down?

A. She did fire at the *Real* before; but not within Point-blank, till after the Fireſhip was deſtroyed.

Q. If the Five Sail had kept their Wind, would they not have cut off the *Dorſetſhire?*

A. I believe they could have fetched her, ſhe being the Leewardmoſt Ship of the Diviſion.

Q. If they had kept their Wind, and the *Dorſetſhire* had followed the Fireſhip, could they not have cut her off?

A. Yes, they might.

Q. If you had been Captain of the *Dorſetſhire*, would you have followed her?

The Court obſerved, This was not a fair Queſtion.

Q. From firſt to laſt of the Engagement, was the *Dorſetſhire* ever farther off from the Enemy, than to do Execution?

A. She was within random Shot at firſt, and, towards the latter Part, I think, ſhe was within Point-blank.

Then he withdrew.

Lieutenant *Hyde*, of the *Marlborough*, called in, and ſworn.

His Affidavit read; *viz.*

Lieutenant Frederick Hyde *maketh Oath*;

THAT he was Lieutenant on board his Majeſty's Ship the *Marlborough* in the *Mediterranean*, in the Month of *February*, 1743, in the Fleet commanded by *Thomas Mathews*, Eſq; of which *Richard Leſtock*, Eſq; was Vice-Admiral, and *William Rowley*, Eſq; Rear-Admiral, under the Command of the ſaid Admiral *Mathews*.

That, about 9 or 10 o'Clock in the Morning, of the 11th *February*, 1743, the ſaid Admiral *Mathews* made a Signal for the Fleet to form in Line of Battle ahead; that Captain *Burriſh* commanded the *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, Captain *Williams* the *Royal Oak*, Captain *Pett* the *Princeſſa*, and Captain *Sclater* the *Somerſet*; and were all ſtationed in the Centre Diviſion.

That all the above Ships, except the *Royal Oak*, who came into the Fleet a ſmall time before the Engagement hereafter mentioned, were in Sight and View of the ſaid Signal: And that the Admiral with the Centre Diviſion, were about Four or Five Miles from the Combined Fleet: That, about half an Hour paſt 10 o'Clock, Signal was made to engage; and all the Captains were in View of ſuch Signal; and about One o'Clock the Admiral bore down to engage the Enemy.

That the *Dorſetſhire* fired at the *Spaniſh* Admiral's Second, aſtern, as he apprehended; but believes, ſhe was not within point-blank Shot.

That the *Marlborough* was hard preſſed and diſabled, having loſt her Main and Mizen Maſts; and was in Danger of being deſtroyed by the Enemy; and the *Namur* and *Norfolk* were engaged in Fight; that the *Dorſetſhire*, *Rupert*, and *Royal Oak*, were capable of yielding Aſſiſtance to the *Marlborough*, but they nor either of them did.

That, between 4 and 5 o'Clock in the Afternoon, the *Anne Galley* Fireſhip bore down towards the *Real*; and ſhe was not covered, nor conducted, by any of his Majeſty's Ships; and believes, that the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, might have gone down with her, and covered her; and that they were not ſo engaged, but that they might have ſo done, but did not.

Frederick Hyde.

Sworn before me, this 20th *September*, 1745.
Charles Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Was the *Dorſetſhire* within point-blank Shot of the Enemy?

A. I think not.

Q. How long did ſhe continue ſo; or when did ſhe bear away afterwards?

A. I did not ſee her bear away.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. Did you obſerve a Boat go on board the *Dorſetſhire?*

A. No.

Q. Where was the *Dorſetſhire* when the Fireſhip blew up?

A. Upon the *Marlborough*'s Weather-Quarter.

Q. Did you obſerve the *Dorſetſhire* bearing down?

A. She edged a little before us.

Q. Was ſhe not nearer the Enemy at Four o'Clock, than when ſhe firſt brought to?

A. I think not.

Q. What Diſtance was the *Dorſetſhire* from you, when you firſt brought to, to engage?

A. About a Mile to Windward.

Q. How did ſhe bear?

A. Upon the Weather-Quarter; not quite a Mile.

Q. After your Maſts were ſhot away, how did ſhe bear?

A. I can't tell.

Q. Did the *Dorſetſhire* engage ahead or aſtern of the *Marlborough?*

A. Aſtern.

Q. Don't you remember her bearing down a Second time?

A. No, not until the Admiral wore.

Q. Were any Shot fired from the *Dorſetſhire*, between you and the *Namur?*

A. Not that I know—I think ſhe was never ſo far upon our Weather-Bow as to be able to do ſo.

Q. Was the *Dorſetſhire* firing at the *Hercules*, when you engaged the *Real?*

A. Yes.

Q. When the *Dorſetſhire* engaged the *Hercules*, was ſhe near enough?

A. I think not.

Q. Did any of her Shot ſtrike you?

A. I can't ſay that any did.

Q. Did the *Dorſetſhire* do her Duty, as a proper Second, in aſſiſting the *Marlborough?*

A. No.

Q. Do you think ſhe had Room to come into her Station, in a Line with you?

A. Yes.

Q. Was there a commanding Gale?

A. Yes.

Q. How many *Spaniſh* Ships were coming up aſtern of the *Hercules?*

A. I believe there were Five.

Q. Did you obſerve the headmoſt of them to fire at the Fireſhip?

A. Yes.

Q. What Effect had their Shot on her?

A. I can't ſay—I believe ſhe was ſunk by Shot from the *Real.*

Q. How long was it after the headmoſt of thoſe Five Ships fired at her, before ſhe blew up?

A. Preſently.

Q. Was the *Dorſetſhire* ever before the *Marlborough*'s Beam, before loſing her Maſts?

A. She was before our Beam; but I can't ſay whether before or after loſing our Maſts.

Q. Was it your Lee or Weather Beam?

A. The Weather-Beam.

Q. Was the *Dorſetſhire* ever to Leeward of your Ship after the Engagement began?

A. Yes; but it was after Three o'Clock.

Q. Was the *Dorſetſhire* of any Aſſiſtance to you after your Maſts were gone?

A. No.

Q. How long, after you began to engage, was it before you loſt your Maſts?

A. About Two or Three Hours.

Q. Was the *Dorſetſhire*, at any time, to Leeward of the *Marlborough*, before the Admiral wore?

A. I can't ſay; but I think it was at the Time of Wearing.

Q. Was the *Hercules*'s Fire chiefly at you, or the *Dorſetſhire?*

A. At the *Marlborough*, I apprehend.

Q. How many Guns could you bring to bear upon the *Hercules?*

A. A few of the After-Guns.

Aſked by the Priſoner,

Q. Did you ever ſee the *Dorſetſhire* engage the *Hercules?*

A. Yes, at a great Diſtance.

Q. At what Diſtance?

A. Not within point-blank Shot.

Q. Could ſhe do Execution?

A. I think, not much.

Q. Was this at the firſt of the Engagement?

A. Yes.

Q. How far aſtern was the *Dorſetſhire* from the *Marlborough?*

A. Near a Mile—Upon her Quarter.

Q. How far was the *Hercules* aſtern of the *Real?*

A. About a Quarter of a Mile, and rather to Leeward.

Q. Did ſhe keep the ſame Diſtance?

A. Much about the ſame from firſt to laſt.

Q. Did ſhe engage the *Marlborough* the whole Time?

A. Yes, as much as ſhe could.

Q. Did you ſee any Damage the *Hercules* had received, before you fired at her?

A. No.

Q. Did the *Hercules* leave you before the *Real?*

A. Yes.

Q. How long?

A. I can't ſay.

Q. Did the *Hercules* go to Leeward or Windward of the *Real?*

A. To Leeward.

Q. Did you never obſerve the *Dorſetſhire* to give you Aſſiſtance, whilſt you engaged thoſe Two Ships?

A. She fired at too great a Diſtance.

Q. At what Diſtance?

A. As I ſaid before, near a Mile, upon the *Marlborough*'s Weather-Quarter.

Q. Was the *Dorſetſhire* abreaſt of the *Hercules?*

A. Yes.

Q. How near do you apprehend the *Hercules* to be from the *Marlborough?*

A. She might be about half a Mile diſtant.

Q. What Diſtance from the *Real?*

A. I can't juſtly ſay.

Q. How far was the *Marlborough* to Windward of the *Hercules?*

A. About half a Mile, or rather more.

Q. Did you obſerve the Fireſhip go down to burn the *Real?*

A. Yes:—After ſhe paſſed us.

Q. Did

Q. Did you then ſee the *Dorſetſhire*?

A. Yes:—When the Fireſhip blew up ſhe was on our Weather-Quarter.

Q. Was the *Marlborough*, or *Dorſetſhire*, then neareſt to the *Real*?

A. The *Marlborough*.

Q. Do you know where the Fireſhip's Men went?

A. To the *Dorſetſhire*.

Q. Why went they to the *Dorſetſhire*, rather than to the *Marlborough*, if the *Marlborough* was neareſt?

A. I can't tell:—The *Dorſetſhire* might be then neareſt, as, I believe, ſhe had wore.

Q. Did the Fireſhip go ahead or aſtern of you?

A. I did not ſee her till ſhe was paſt.

Q. Did ſhe go ahead or aſtern of the *Dorſetſhire*?

A. I don't know:—I did not ſee her till ſhe was paſt.

Then he withdrew.

Lieutenant *Jekyll*, of the *Eſſex*, called in, and ſworn.

His Affidavit read; *viz*;

Edward Jekyll, *late Lieutenant of his Majeſty's Ship* Eſſex, *maketh Oath*;

THAT he was Lieutenant of the ſaid Ship during the Month of *February*, 1743; and, on the 11th of the ſaid Month of *February* the ſaid Ship was ſtationed the next Ship to the *Dorſetſhire*, and the Third aſtern of Admiral *Mathews*, in the Engagement that Day off *Toulon*.

That the *Dorſetſhire*, Captain *Burriſh*; *Eſſex*, Captain *Norris*; and the *Rupert*, Captain *Ambroſe*; bore down towards the Enemy when the Admiral did; but did not go down ſo far, or ſo near the Enemy as the Admiral did; and not far enough to form the Line; and that they might have bore down as near as the Admiral and *Marlborough* did, there being Wind ſufficient.

That the *Dorſetſhire* bore down more than the *Eſſex*, and began to fire ſoon after the Admiral did, and continued Firing during the greateſt Part of the ſaid Engagement; but believes ſhe was not within point-blank Shot till Mr. *Bentley* had been on board her from the Admiral; and then this Deponent believes ſhe did come within point-blank Shot, but that then ſhe did not get into the Line with the *Marlborough*.

That the *Anne Galley* Fireſhip bore down upon the *Real*; and paſſed by, and in Sight of the *Dorſetſhire*, *Eſſex*, and *Rupert*; which Ships were at hand, ready to have conducted and covered her, and which they might have done, and were then reſpectively to Windward of their Stations; but neither of them did perform that Service; and the Fireſhip blew up under the *Real*'s Quarter, and was then upon the *Eſſex*'s Starboard-Beam.

That the *Marlborough* was diſabled in the ſaid Engagement, having her Main and Mizen Maſts ſhot away; and that the *Dorſetſhire* and *Eſſex* were ſtationed aſtern of her, but kept to Windward; and the *Rupert* was ſtationed the next Ship aſtern of the *Eſſex*; and, if ſhe had bore away, and paſſed the *Eſſex* and *Dorſetſhire*, as ſhe might have done, if conſiſtent with Diſcipline, ſhe might have aſſiſted and relieved the *Marlborough*, and covered the Fireſhip; but that ſhe did not do it, but kept to Windward of her Station during all or the greateſt Part of the ſaid Engagement.

That, had the *Dorſetſhire*, *Eſſex*, and *Rupert*, bore equally down with the *Marlborough*, they certainly could have aſſiſted and relieved her; and could have forced the Four ſternmoſt *Spaniſh* Ships aſtern, for the Vice-Admiral's coming up.

That he believes the ſaid Three Ships were never in a Line with the *Marlborough*, during the Engagement: But he ſaw the *Royal Oak* engaged with ſome one or more of the ſternmoſt Ships of the Enemy towards the latter Part of the Afternoon, the only time he obſerved her; and, he believes, within point-blank Shot, being then far to Leeward of the *Dorſetſhire*, *Eſſex*, and *Rupert*.

That he believes, in caſe the Ships aſtern of the *Marlborough* had bore down equally with her, that the *Real* muſt have been taken by the *Britiſh* Ships, or burnt by the Fireſhip; and that the *Marlborough* not being ſo aſſiſted, was one principal Cauſe of the Miſcarriage.

Edw. Jekyll.

Sworn this 7th Day of *September*, 1745, before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. You ſay, The *Dorſetſhire* brought to without point-blank Shot of the Enemy, when the *Namur* and *Marlborough* engaged:—How long did ſhe continue ſo?

A. Till Four o'Clock:—After Mr. *Bentley* had been on board, ſhe bore away.

Q. Did the Fireſhip go aſtern of the *Dorſetſhire*?

A. Yes:—Aſtern of her, and ahead of us.

Q. Did ſhe bear away upon the Fireſhip's Bearing down?

A. I am not ſure.

Q. What time did the *Real* bear away?

A. About Four or Five o'Clock.

Q. Did you ſee the *Dorſetſhire* engage any of the *Spaniſh* Ships?

A. I can't ſay:—I ſaw her firing, but I know not at what Ship.—When they wore in the Evening with the Admiral, the *Dorſetſhire*, and the other Ships aſtern of her, engaged as they paſſed the *Spaniſh* Ships.

Q. What Diſtance was the *Dorſetſhire* to Leeward of the *Eſſex*?

A. Two Cables Length:—And the *Eſſex*

was about a Mile to Windward of the *Marlborough*.

Q. You ſay the *Dorſetſhire* was not engaged, till the Admiral wore?

A. She fired; but I know not at what Ship; but I believe at the *Hercules*.

Q. At what Diſtance did the *Dorſetſhire* engage her?

A. About half a Mile, or more:—The Shot fell ſhort.

Q. How far was that Ship aſtern of the *Spaniſh* Admiral?

A. She was her Second aſtern.

Q. Could the *Dorſetſhire* have got nearer the Enemy?

A. Yes:—She might have got nearer.

Q. Did the *Dorſetſhire* aſſiſt the *Marlborough*, as ſhe ought to have done?

A. She might, to be ſure, have gone nearer.

Q. Did ſhe do any Damage to the *Hercules?*

A. I did not obſerve any.

Q. Did you ſee any of the Enemy's Shot come over the *Dorſetſhire?*

A. Yes, ſeveral:—And, at the ſame time, the *Dorſetſhire*'s Shot fell ſhort of them; they firing their Weather, and we our Lee Guns.

Q. Where was you quartered?

A. Upon the Upper-Gun-deck.

Q. Did not the *Dorſetſhire* bear down in any Part of the Day?

A. Yes:—I ſaw her edging down.

Q. Did you obſerve the Motions of the *Hercules* when ſhe bore away.

A. No.

Q. Did your Ship fire?

A. Yes:—Till ſhe got ſo far ahead, that ſhe brought the *Dorſetſhire* upon her Beam.

Q. Where was the *Dorſetſhire* when the Fireſhip blew up?

A. Upon the *Eſſex*'s Beam.

Q. Did you obſerve the Five *Spaniſh* Ships coming up?—What Diſtance might there be when the Fireſhip blew up?

A. Not a great Diſtance:—I ſaw ſeveral Shot from the Headmoſt of them fall about the Fireſhip.

Q. Was the *Dorſetſhire* then to Windward or to Leeward of the *Marlborough?*

A. To Windward, and upon our Lee-Beam.

Q. Was the Fireſhip to Leeward of the *Marlborough* when ſhe blew up?

A. Yes:—And was near upon our Beam.

Q. Could thoſe Five Ships have fetched the *Dorſetſhire?*

A. I believe not:—They might have fetched to Windward of the Fireſhip, but not of the *Dorſetſhire*.

Q. Did you ſee the *Dorſetſhire* engaged before the Admiral bore away?

A. Yes:—She fired a great many Shot.

Q. Did you obſerve the *Dorſetſhire* cloſely engaged at any time?

A. I think not:—But I believe ſhe was within Point-blank the latter Part of the Engagement.

Q. Did you not expect, that the *Dorſetſhire* would have bore away to the Aſſiſtance of the *Marlborough?*

A. Yes; I imagined ſhe would.

Q. Did any of the *Hercules*'s Shot ſtrike the *Eſſex?*

A. Yes; One did.

Q. How far was the *Dorſetſhire* then to Leeward of you?

A. About Two Cables Length, till after ſhe bore away more.

Aſked by the Priſoner,

Q. Did you obſerve any Ships aſtern, and to Leeward of the *Dorſetſhire?*

A. None, till the Evening.

Q. How far was the *Dorſetſhire* from the *Hercules* when ſhe engaged her?

A. About Three Quarters of a Mile.

Q. Was ſhe near enough to do Execution?

A. I think not:—I obſerved the Shot of all the Ships fall ſhort of the Enemy; though the Enemy's Shot reached ours:—Several of them went over the *Eſſex*.

Q. Did you obſerve the *Hercules* to have received any Damage, whilſt engaged with the *Dorſetſhire?*

A. I don't remember.

Q. When the Admiral and *Marlborough* bore down to engage the *Real*, Did the *Marlborough* bear down in a Line with the *Namur?*

A. Yes.

Q. Did they keep in the Line?

A. No; the *Namur* luffed.

Q. How long did the *Namur* engage the *Real?*

A. About Three Quarters of an Hour.

Q. Was not the *Dorſetſhire* in a Line with the *Marlborough?*

A. No.

Q. Was ſhe in a Line with the *Namur*, after ſhe luffed?

A. I think not; till after Mr. *Bentley* had been on board.

Q. Did you obſerve the *Dorſetſhire*, at any time, to bear down to the Aſſiſtance of the *Marlborough?*

A. I can't ſay ſhe did: But ſhe edged down; and there was the *Hercules* for her to engage.

Q. Was not engaging the *Hercules* or *Real* giving Aſſiſtance to the *Marlborough?*

A. It was, doubtleſs; as it took off ſome of their Fire from the *Marlborough*.

Q. Did you obſerve the *Hercules* when ſhe went off from the *Marlborough?*

A. I don't remember.

Q. Do you remember the *Real*'s going off?

A. I remember her falling off before the Wind; but I can't ſay whether ſhe bore away, or not.

Q. Did you obſerve the *Dorſetſhire* go down ahead of the *Marlborough*, and engage the *Real?*

A. No.

Q. Did

Q. Did you obſerve, when the Admiral wore, whereabout the *Dorſetſhire* was?

A. No.

Q. Do you remember where ſhe was when your Ship wore?

A. Greatly to Leeward of us.

Q. Whether, from the Beginning to the End of the Action, do you believe the *Dorſetſhire* was ſo far from the Enemy, as not to do Execution?

A. I believe ſhe did Execution, in the Evening, after Wearing.

Q. Do you imagine Shot can go over a Ship Five hundred Yards, and that Shot not do Execution?

A. I did not ſay the *Eſſex* was Five hundred Yards to Windward of the *Dorſetſhire*, at the Beginning.

Then he withdrew.

Lieutenant *Gore*, of the *Eſſex*, called in, and ſworn.

His Affidavit read, as follows;

Hamilton Gore, *late Lieutenant of his Majeſty's Ship* Eſſex, *maketh Oath*;

THAT he was Lieutenant of the ſaid Ship, during the Month of *February*, 1743; and, on the 11th of the ſaid Month of *February*, the ſaid Ship was ſtationed the next Ship to the *Dorſetſhire*, and the Third aſtern of Admiral *Mathews*, in the Engagement that Day off *Toulon*.

That the *Dorſetſhire*, Captain *Burriſh*; the *Rupert*, Captain *Ambroſe*; and the *Royal Oak*, Captain *Williams*; bore down towards the Enemy, as the Admiral did, and not far enough to form the Line; and that they might have bore down as near as the Admiral and *Marlborough* did, there being Wind ſufficient.

That the *Dorſetſhire* began to fire ſoon after the Admiral did, and continued Firing during the greateſt Part of the ſaid Engagement; but believes ſhe was not within point-blank Shot, till Mr. *Bentley* had been on board her from the Admiral, and the Fireſhip had been blown up; and then this Deponent believes ſhe did come within point-blank Shot; but that then ſhe did not get into the Line with the Admiral or *Marlborough*.

That the *Anne Galley* Fireſhip bore down upon the *Real*, and paſſed by and in Sight of the *Dorſetſhire*, *Eſſex*, and *Rupert*; which Ships were at hand, ready to have conducted and covered her; and which they might have done; and were then, reſpectively, to Windward of their Stations; but neither of them did perform that Service.

That the *Marlborough* was diſabled in the ſaid Engagement, having her Main and Mizen Maſts ſhot away; and that the *Dorſetſhire* was not in a Line with the *Namur* and *Marlborough*, nor within point-blank Shot of the Enemy when ſhe began to fire; but towards the Evening was a great deal nigher the Enemy: That the *Eſſex* kept to Windward of the *Dorſetſhire*, *Rupert*, and *Royal Oak*; and that he ſaw the *Rupert* to Windward of the *Royal Oak*.

That all the ſaid Four Ships kept to Windward of the Line during the greateſt Part of the Engagement: That if they had bore down properly, they might have aſſiſted the *Marlborough*, covered the Fireſhip, and kept the Four ſternmoſt *Spaniſh* Ships from getting up to the *Real*.

Hamilton Gore.

Sworn, this 6th Day of *September*, 1745, before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Was the *Dorſetſhire*, when firſt brought to, within point-blank Shot of the Enemy?

A. No.

Q. How long did ſhe engage in that Poſition?

A. About Two Hours; till between Three and Four o'Clock.

Q. What time did the Fireſhip paſs the *Dorſetſhire*?

A. Between Three and Four o'Clock.

Q. Did ſhe go ahead or aſtern of the *Dorſetſhire*?

A. I believe, aſtern.

Q. Where was you quartered?

A. On the Lower-deck.

Q. Where was you when the Fireſhip paſſed by?

A. On the Lower-deck, and continued there.

Q. How far were you to Windward of the *Dorſetſhire*, when firſt brought to?

A. About a Cable's Length.

Q. Did the *Dorſetſhire* lie to, or bear down?

A. She lay to, to the beſt of my Knowlege; but I am not certain.

Q. How long did ſhe lie to, before ſhe bore away?

A. She bore away a little, I believe, juſt after Captain *Bentley* left her; and might be within Point-blank of the Enemy; which was the only time ſhe was ſo.

Q. Did you not come up on the Upper-deck to ſee what was doing?

A. No.

Q. Did you ſee the *Dorſetſhire* firing at the Enemy?

A. Yes; but, I believe, not within Point-blank.

Q. Did you obſerve the *Marlborough*, juſt after ſhe loſt her Maſts?

A. Yes.

Q. Did you obſerve where the *Dorſetſhire* was at that time?

A. Upon the *Marlborough*'s Weather-Bow.

Q. How long was it between that, and the Fireſhip blowing up?

A. I can't tell.

Q. What Diſtance was the *Dorſetſhire* from the Fireſhip when ſhe blew up?

A. Not within Point-blank.

Q. Was ſhe near enough to cover the Fireſhip?

A. No.

Q. What Ship was neareſt to the Fireſhip, when ſhe blew up?

A. The *Dorſetſhire*, of the Four ſternmoſt Ships; but ſhe was not nearer than the *Marlborough*.

Q. How far was the Fireſhip from the *Eſſex*, when ſhe blew up?

A. Half a Mile.

Q. How far was the *Dorſetſhire* then from the *Eſſex*?

A. I can't tell.

Q. Did any of the Enemy's Shot reach the *Eſſex*?

A. At firſt they did: One of them hit her Hull, and dropped down.

Aſked by the Priſoner,

Q. Was you ever to Leeward of the *Dorſetſhire* during the Engagement?

A. No.

Q. Were any other of the Ships aſtern of her, to Leeward of her?

A. No.

Q. Did you ever obſerve the *Dortſetſhire* to ſheer off from the Enemy?

A. No.

Q. What greater Diſtance was you from the *Dorſetſhire*, at the latter End of the Engagement, than at firſt?

A. I can't ſay; but we were farther.

Q. Did you obſerve the Enemy's Shot come over the *Dorſetſhire*?

A. I did not obſerve it: Some Shot fell ſhort of the *Eſſex*; but whether they came over the *Dorſetſhire*, I can't ſay.

Q. Did they reach the *Eſſex*?

A. They came within Piſtol-ſhot of her.

Q. How far was the *Eſſex* from the *Dorſetſhire*, when the *Marlborough*'s Maſts were gone?

A. A Cable's Length.

Q. Did you ever obſerve the *Dorſetſhire*'s Shot fall ſhort of the Enemy?

A. I never did.

Q. Did you obſerve the *Dorſetſhire* to be ſo far from the Enemy, during any Part of the Engagement, as not to do Execution?

A. She was not within point-blank Shot till towards the Evening.

Then he withdrew.

Lieutenant *Peyton* of the *Eſſex*, called in, and ſworn.

His Affidavit read, as follows; *viz.*

Joſeph Peyton, *late Fourth Lieutenant of his Majeſty's Ship* Eſſex, *which was in the Fleet under the Command of Admiral* Mathews *(and in his own Diviſion) at the Time of the Engagement off of* Toulon *in the* Mediterranean *Sea, between the aid Fleet and the Combined Fleet of* France *and* Spain, *in the Month of* February, 1743, *maketh Oath, and ſaith;*

THAT he was Lieutenant of the ſaid Ship during the Month of *February*, 1743; and, on the 11th of the ſaid Month of *February*, the ſaid Ship was ſtationed the next Ship to the *Dorſetſhire*, and the Third aſtern of Admiral *Mathews*, in the Engagement that Day off *Toulon*.

That the *Dorſetſhire*, Captain *Burriſh*; the *Rupert*, Captain *Ambroſe*; and the *Royal Oak*, Captain *Williams*; bore down towards the Enemy, as the Admiral did, and not far enough to form the Line; and that they might have bore down as near as the Admiral and *Marlborough* did, there being Wind ſufficient.

That the *Dorſetſhire* began to fire ſoon after the *Marlborough* did, and continued Firing dureing the greateſt Part of the Engagement; but he believes ſhe was not within point-blank Shot, till Mr. *Bentley* had been on board her from the Admiral, and the Fireſhip had been deſtroyed; and then this Deponent believes ſhe did come within point-blank Shot.

That the *Anne Galley* Fireſhip bore down upon the *Real*; and paſſed by, and in Sight of the *Dorſetſhire*, *Eſſex*, and *Rupert*; which Ships were at hand, ready to have conducted and covered her; and which they might have done; and were then reſpectively to Windward of their Stations; but neither of them did perform that Service.

That the *Marlborough* was diſabled in the ſaid Engagement, having her Main and Mizen Maſts ſhot away: And that the *Dorſetſhire* was not in a Line with the *Namur* and *Marlborough*, nor within point-blank Shot of the Enemy, when ſhe began to fire; but towards the Evening was a great deal nigher the Enemy: That the *Eſſex* kept to Windward of the *Dorſetſhire*, *Rupert*, and *Royal Oak*; and that he ſaw the *Rupert* to Windward of the *Royal Oak*.

That all the ſaid Ships kept to Windward of the Line during the greateſt Part of the Engagement: That if they had bore away properly, they might have aſſiſted the *Marlborough*, covered the Fireſhip, and kept the Four ſternmoſt *Spaniſh* Ships from getting up to the *Real*.

Joſeph Peyton.

Sworn before me, this 10th Day of *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Did the *Dorſetſhire* bring to, without point-blank Shot?

A. Yes, I am certain ſhe did.

Q. How long did ſhe continue ſo?

A. Till Half paſt Four, when the Fireſhip blew up.

Q. After that happened, what did the *Dorſetſhire* do?

A. She

A. She bore down towards the *Real*, and engaged within point-blank Shot.

Q. What did the *Real* do then?

A. The *Real*'s Stern was towards the *Dorſetſhire*.

Q. How long did the *Dorſetſhire* continue Firing within Point-blank?

A. About half an Hour.

Q. How long was it before the Admiral wore, that the *Dorſetſhire* engaged within Point-blank?

A. About Three-Quarters of an Hour.

Q. How came the *Dorſetſhire* to leave off firing?

A. She ſeemed to continue it till they wore.

Q. What was her firſt Fire at?

A. I believe at the *Hercules*, next aſtern of the *Real*.

Q. What Diſtance was the *Eſſex* to Windward of the *Dorſetſhire*?

A. About Two Cables Length.

Q. Did any Shot go over the *Dorſetſhire*?

A. Yes; one went over the *Eſſex*, which ſeemed to be from the *Hercules*.

Q. Was the *Dorſetſhire* then between the *Eſſex* and the *Hercules*?

A. No;—the *Dorſetſhire* was to Leeward of the *Eſſex*, and ahead withal.

Q. How was the *Hercules* ſituated at that time?

A. Near aſtern of the *Spaniſh* Admiral.

Q. Was the *Dorſetſhire* at any time as cloſely engaged as the *Marlborough*?

A. No.

Q. How near was the *Dorſetſhire* to the Enemy, after Bearing down?

A. Within point-blank Shot, after the Fireſhip blew up.

Q. Was ſhe to Leeward, or Windward, of the *Marlborough*?

A. To Windward.

Q. Did you ſee the Fireſhip blow up?

A. No;—I ſaw the Smoak juſt after.

Q. Where was the *Dorſetſhire* then?

A. Between us and the Enemy, to Windward of the *Marlborough*.

Q. Was the *Dorſetſhire* within point-blank Shot of the Enemy, before the Fireſhip blew up?

A. No.

Q. Was ſhe bearing down, or laying to, or what Sail had ſhe?

A. I don't remember.

Q. How many *Spaniſh* Ships aſtern were coming up?

A. Five, beſides the *Hercules*.

Q. Did not the headmoſt fire at the Fireſhip?

A. She did, juſt before ſhe blew up.

Q. What Diſtance might they be from you, at the time the Fireſhip blew up?

A. A great Diſtance, — even out of random Shot.

Q. Could the *Dorſetſhire* have bore down to aſſiſt the *Marlborough*, or cover the Fireſhip?

A. I know of no Impediment.

Q. What Diſtance was the *Dorſetſhire* from you, when the headmoſt of the Five *Spaniſh* Ships fired at the Fireſhip?

A. I cannot tell.

Q. Could the Five *Spaniſh* Ships have fetched to Windward of the *Dorſetſhire*?

A. I believe they could, had they kept their Wind, after the Fireſhip blew up.

Q. When the headmoſt of thoſe Five *Spaniſh* Ships fired at the Fireſhip, what Diſtance was the *Dorſetſhire* from the Enemy?

A. More than Muſquet-ſhot, I believe.

Aſked by the Priſoner,

Q. Did you ever obſerve the *Dorſetſhire* ſheer off from the Enemy?

A. No.

Q. Did you obſerve her to edge nearer to the Enemy?

A. I remember ſhe edged down once or twice; but I do not remember the particular Times.

Q. Was the *Dorſetſhire*, when ſhe began to engage, out of Gun-ſhot of the Enemy?

A. She was within random Shot.

Q. Within what kind of random Shot.

A. Between point-blank, and the utmoſt Extent of Random.

Q. What do you take point-blank Diſtance to be?

A. As far as a Gun will carry, without elevating the Metal.

Q. What is random Diſtance?

A. As far as a Gun will carry, when the Metal is elevated.

Q. Did you obſerve the *Dorſetſhire* bear down, and engage the *Real*, after the *Marlborough* loſt her Maſts?

A. Yes.

A. Did the *Dorſetſhire* engage the *Real*, before or after the Fireſhip blew up?

A. After.

Q. Did the Fireſhip go down ahead or aſtern of the *Dorſetſhire*?

A. To the beſt of my Remembrance, aſtern.

Q. Did you obſerve her to go in a direct Line for the *Real*, or to take a Sweep.

A. To the beſt of my Remembrance, ſhe ſeemed to take a Sweep.

Q. How far was ſhe from the *Real*, when ſhe went aſtern of the *Dorſetſhire*.

A. I can't judge.

Q. Was it the *Dorſetſhire*'s Duty to go down and attack the Five Sail of *Spaniſh* Ships coming up?

Not anſwered, the Court thinking it an improper Queſtion.

Then he withdrew.

The Court adjourned till To-morrow Morning, at Eight of the Clock.

The

The Third Day's TRYAL of Captain GEORGE BURRISH,

On Board His MAJESTY's Ship the London, at Chatham,

FRIDAY, 27th September, 1745.

THE Court met, according to Adjournment, conſiſting of all the Members who were preſent Yeſterday, except Captain *Haddock*; whoſe Ship, the *Pearl*, being ready for the Sea, he was excuſed attending any longer at the Court, in order to repair to his Duty on board.

The Priſoner was brought in by the Marſhal; and the Witneſſes were ordered to be called in.

Joſeph Myers, Maſter of the *Eſſex*, called in, and ſworn.

His Affidavit read, as follows; *viz.*

Joſeph Myers, *Maſter of the* Eſſex, *maketh Oath*;

THAT he was Maſter on board his Majeſty's Ship the *Eſſex*, in the *Mediterranean*, in the Month of *February*, 1743, in the Fleet commanded by *Thomas Mathews*, Eſq; of which *Richard Leſtock*, Eſq; was Vice-Admiral, and *William Rowley*, Eſq; Rear-Admiral, under the Command of the ſaid Admiral *Mathews*.

That, about 9 or 10 o'Clock in the Morning of the 11th of *February*, 1743. he the ſaid Admiral *Mathews* made a Signal for the Fleet to form in Line of Battle ahead: That Captain *Burriſh* commanded the *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, Captain *Williams* the *Royal Oak*, Captain *Pett* the *Princeſſa*, and Captain *Sclater* the *Somerſet*; and were all ſtationed in the Centre Diviſion.

That all the above Ships, except the *Royal Oak*, who came into the Fleet a ſmall time before the Engagement, hereafter-mentioned, were in Sight and View of the ſaid Signal: And that the Admiral, with the Centre Diviſion, were about Four or Five Miles from the Combined Fleet: That, about half an Hour paſt 10 o' Clock, Signal was made to engage, and all the Captains were in View of ſuch Signal; and about One o'Clock the Admiral bore down, to engage the Enemy.

That the *Dorſetſhire*, *Rupert*, and *Royal Oak*, bore down with the Admiral a little Way, but not to their Station, and equal with the *Marlborough* and *Namur*; but the *Royal Oak* bore away a conſiderable way to Leeward of the *Rupert* and *Eſſex*, which were the Ships immediately ahead of her; and alſo to Leeward of the *Dunkirk*, which was the Ship next-aſtern of her; and that there was Wind ſufficient for them to have gone down, and engaged nearer, if they had thought proper.

That the *Dorſetſhire* fired at the *Spaniſh* Admiral's Second, aſtern, as he apprehended; but believes ſhe was not within point-blank Shot.

That the *Marlborough* was hard preſſed, and diſabled, having loſt her Main and Mizen Maſts, and was in Danger of being deſtroyed by the Enemy; and the *Namur* and *Norfolk* were engaged in Fight: That the *Dorſetſhire*, *Rupert*, and *Royal Oak*, were capable of yielding Aſſiſtance to the *Marlborough*; but they, nor either of them, did.

That, between 4 and 5 o'Clock in the Afternoon, the *Anne Galley* Fireſhip bore down towards the *Real*; and ſhe was not covered or conducted by any of his Majeſty's Ships; and that the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, might have gone down with her, and covered her; and that they were not ſo engaged, but that they might have ſo done, but did not; as appeared to him.

Joſ. Myers.

Sworn before me, this 6th of *September*, 1745.

Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. When the *Dorſetſhire* brought to, to engage, was ſhe within Point-blank of the Enemy?

A. I believe not.

Q. Did ſhe not bear down to cover the Fireſhip?

A. I did not ſee her.

Q. Did you ſee a Boat go from the *Dorſetſhire*, to ſuccour the Fireſhip?

A. No.

Q. Did the *Dorſetſhire* lie to, all the Time, and not go nearer?

A. No:—After the Admiral's Officer had been on board the *Eſſex*, between Four and Five o'Clock, I ſaw her bear down nearer, and engage the *Real*.

Q. Was the *Real* then before the Wind?

A. Not till ſome time after. It was near Five o'Clock, before ſhe put before it.

Q. How long were the *Namur* and *Marlborough* engaged, before the *Dorſetſhire* gave them Aſſiſtance?

A. The *Marlborough* had been engaged about an Hour and an Half, or near Two Hours, before the *Dorſetſhire* gave her any Aſſiſtance.

Q. Might ſhe have gone nearer the *Marlborough*, and have given her Aſſiſtance ſooner?

A. Yes; ſhe had nothing to hinder her.

Q. Were

Q. Were the *Marlborough*'s Maſts gone, before the *Dorſetſhire* came within Point-blank?

A. Yes.

Q. How many Sail of *Spaniſh* Ships were aſtern of the *Hercules?*

A. Five.—But thoſe Five did not cloſe their Line till the Evening.

Q. Then there were Six aſtern of the Admiral?

A. Yes.

Q. What Reaſon do you imagine made the *Real* bear away?

A. I believe, the Shot from the *Dorſetſhire.*

Q. Was that before or after the Fireſhip blew up?

A. Before.

Q. Was the *Dorſetſhire* within Point-blank Shot, before or after the Fireſhip blew up?

A. I believe, before. But it was after the *Marlborough* loſt her Maſts.

Q. What was the Cauſe of the *Hercules*, the *Spaniſh* Admiral's Second, ſhooting under her Admiral's Lee?

A. It was occaſioned either by the Shot from the *Dorſetſhire*, or *Marlborough*, I can't tell which.

Q. When the *Marlborough* was engaged with the *Real*, was the *Dorſetſhire* as cloſely engaged with the *Hercules?*

A. No.

Q. Do you remember a Boat's going on Board the *Dorſetſhire?*

A. Yes.

Q. Did ſhe go nearer, upon that?

A. Yes.

Q. Did ſhe fall properly into her Station aſtern of the *Marlborough?*

A. I believe not.

Q. Was ſhe in a Line with the *Namur?*

A. I believe, ſhe was as far to Leeward as the *Namur.*

Q. Did any Shot reach your Ship?

A. Yes; ſome did, and one ſtruck us; and I apprehend it came over the *Dorſetſhire.*

Q. Did the Fireſhip, when ſhe bore down to the *Real*, go ahead or aſtern of the *Dorſetſhire?*

A. I am pretty poſitive, ſhe went ahead of the *Eſſex*, and aſtern of the *Dorſetſhire.*

Q. Was you aſtern of the *Dorſetſhire?*

A. We were to Windward, not right aſtern.

Q. Did you obſerve the *Dorſetſhire* hoiſt her Barge out, after the Fireſhip went under her Stern?

A. No, I did not.

Q. Do you think the *Dorſetſhire* was within Point-blank of the Enemy, when the Fireſhip blew up?

A. Yes; I think ſhe was then.

Q. What Diſtance do you take a Point-blank to be?

A. About Three Quarters of a Mile.

Q. When the Fireſhip blew up, where was the *Dorſetſhire*, with reſpect to the *Marlborough?*

A. I believe ſhe was as low down, if not to Leeward of the *Marlborough.*

Q. How far was your Ship to Windward of the *Dorſetſhire* at that Time?

A. About Half a Mile.

Q. How far was ſhe from the *Spaniſh* Admiral's Second, at that Time?

A. Above a Mile.

Q. Was it in the *Dorſetſhire*'s Power, to give Aſſiſtance to the *Marlborough?*

A. Yes; I ſaw nothing to hinder her.

Q. Did ſhe give her any Aſſiſtance?

A. At the latter Part ſhe was to Leeward of the *Marlborough*; and, I judge, muſt have been of Aſſiſtance to her, as I think ſhe was within Point-blank of the *Real.*

Q. Are you ſure ſhe was within Point-blank, when the Fireſhip blew up?

A. Yes, as much as I can judge of a Diſtance.

Q. Did you ſee any Shot go over the *Dorſetſhire*, at that time?

A. Yes; I ſaw a great many go to Windward of her.

Q. When the Fireſhip blew up, was the *Dorſetſhire* to Windward or Leeward of the *Marlborough?*

A. I think, rather to Leeward. But I can't tell poſitively.

Q. When the Fireſhip blew up, where was ſhe, with reſpect to the *Eſſex?*

A. Upon her Beam, or thereabout.

Q. Where was the *Marlborough* then?

A. Before our Beam. I ſaw the Fireſhip blow up, aſtern of the *Marlborough.*

Q. Where was the *Spaniſh* Admiral then, with reſpect to the *Marlborough?*

A. The *Spaniſh* Admiral was pretty near upon the *Eſſex*'s Beam. I ſaw her aſtern of the *Marlborough.* The *Eſſex* had then luffed.

Q. Did you obſerve the *Dorſetſhire*, when ſhe ſhot up abreaſt, and ahead of the *Marlborough*, when the *Marlborough* loſt her Maſts?

A. I did not obſerve it.

Q. When the Enemy's Shot ſtruck the *Eſſex*, where was the *Dorſetſhire?*

A. Almoſt on our Beam. We were Two Cables Length to Windward of her. The *Eſſex* had then ſhot ahead.

Q. What Diſtance was the *Dorſetſhire* then from the Enemy?

A. About Three Quarters of a Mile.

Q. What Time of the Day did the Shot ſtrike you, that you apprehend came over the *Dorſetſhire?*

A. About Three o'Clock.

Q. How long did the *Dorſetſhire* lie in the Poſition ſhe was, when the Shot went over her, and ſtruck you?

A. I can't tell.

Q. Did you ſee many Shot fly over the *Dorſetſhire?*

A. Yes, a great many.

Q. What Diſtance did they fly to Windward of her?

A. Two Cables Length, or about a Quarter of a Mile.

Q. How long did ſhe continue in that Poſition?

A. I am not certain; I believe, about an Hour.

Q. What Shot did you take them to be, that flew over the *Dorſetſhire*?

A. The Enemy's Shot.

Q. Did any of thoſe Shot, that came over the *Dorſetſhire*, ſtrike your Ship?

A. Yes; one. But I can't be poſitive, whether it came over or aſtern of the *Dorſetſhire*.

Q. Did it make any Impreſſion in your Ship's Side?

A. Yes; it dented, and then fell down.

The Priſoner asked,

Q. In what Poſition was the *Eſſex*, with regard to the *Dorſetſhire*, at the Beginning?

A. To Windward of her, upon her Weather-Quarter.

Q. Did you obſerve what Ship the *Dorſetſhire* engaged?

A. I judge ſhe engaged the *Hercules*, the *Spaniſh* Admiral's Second.

Q. When the *Dorſetſhire* firſt engaged, did you obſerve any Shot go over her?

A. I obſerved ſeveral Shot fly aſtern of her, to Windward, and over the *Eſſex*.

Q. How far from the *Dorſetſhire* was the *Eſſex*, at that time?

A. Near Half a Mile, upon her Weather-Quarter.

Q. Do you imagine thoſe Shot, that ſo flew over the *Dorſetſhire*, to be random Shot, with reſpect to the *Dorſetſhire*?

A. I can't ſay, whether they were random Shot, thrown over the *Dorſetſhire* by the Motion of the Enemy's Ship, or not.

Q. What Diſtance was the *Eſſex* then from the *Hercules*?

A. Above a Mile and an Half.

Q. Was the *Dorſetſhire* then upon the *Hercules*'s Broadſide?

A. I can't ſay, whether ſhe was upon her Beam, or not.

Q. Did you obſerve the *Hercules* to have received any Damage, while the *Dorſetſhire* engaged her?

A. I can't ſay, whether ſhe received Damage from the *Dorſetſhire*, or *Marlborough*.

Q. Did you obſerve the *Hercules* to have received any Damage from the *Dorſetſhire* in the Beginning of the Engagement, before ſhe got the Length of the *Marlborough*?

A. I can't ſay, that I ſaw any.

Q. Did you obſerve her bear away from the *Dorſetſhire*?

A. I can't ſay, that I obſerved her bear away.

Q. You have ſaid, ſhe ſhot up to Leeward of her Admiral?

A. If ſhe did bear away, it muſt have been when I did not ſee her.—I have ſaid, That the Reaſon of her going under her Admiral's Lee muſt have been either from the Shot of the *Dorſetſhire*, or *Marlborough*.

Q. When the *Hercules* edged away under the *Real*'s Quarter, Did you obſerve the *Dorſetſhire* to haul from her, or edge nearer?

A. I did not at that Time make any Obſervation of the *Dorſetſhire*'s Motions.

Q. When you ſaw the *Hercules* get under the *Real*'s Quarter, Did you obſerve the *Dorſetſhire* engaging her then?

A. I can't ſay, that I obſerved it.

Q. When was it you ſaw the Shot fly ſo far over the *Dorſetſhire*?

A. It was before Lieutenant *Bentley* came on Board our Ship.

Q. When Lieutenant *Bentley* went from your Ship—How far was you then to Windward of the *Dorſetſhire*?

A. About Two Cables Length.

Priſoner obſerved, I only aſk theſe Queſtions, in order to prove the Shot came over me from the Beginning.

Preſident. Make your Obſervations when you come to your Defence.

Q. After the Fireſhip blew up, Did you obſerve the Enemies Ships coming up to Leeward?

A. Yes, Five Sail.

Q. When they were coming up—Do you think they would have weathered the *Dorſetſhire*, if they had kept their Wind?

A. I can't ſay—but I believe they would have fetched her, if not weathered her.

Q. Did they keep their Wind, or bear away after the *Real*, before Admiral *Mathews* wore?

A. I can't ſay.

Q. Did you ſee the headmoſt of thoſe Ships engage any Ship a ſhort time before Admiral *Mathews* wore?

A. I ſaw Two of them, I believe, fire at the Fireſhip.

Q. After the Fireſhip blew up, Did you ſee them fire?

A. I can't ſay, that I ſaw them fire at any body till after Wearing.

Q. After Admiral *Mathews* wore, Do you remember where the *Dorſetſhire* was?

A. No.

Then he withdrew.

Anthony Pinno, Maſter's Mate on Board the *Namur*, called in, and ſworn.

His Affidavit was read, as follows; *viz.*

Anthony Pinno, *late a Maſter's Mate in his Majeſty's Ship the* Namur; *on board which Ship Admiral* Mathews *hoiſted his Flag, at the late Engagement between his Majeſty's Fleet, and the Combined Fleet of* France *and* Spain, *off of* Toulon, *in the* Mediterranean *Sea, on the Eleventh Day of* February, 1743, *maketh Oath*;

THAT,

THAT, on the Morning of the aforeſaid Day, Admiral *Mathews* made the Signal to engage the Enemy; That he, and Rear-Admiral *Rowley*, bore down, and engaged the Combined Fleets, with ſeveral of his Majeſty's Ships: That, at the Time of making that Signal, Captain *Burriſh*, Commander of his Majeſty's Ship the *Dorſetſhire*, was ſtationed the Second Ship aſtern of the Admiral; Captain *Ambroſe*, Commander of his Majeſty's Ship the *Rupert*, the Fourth Ship aſtern of the Admiral; Captain *Williams*, Commander of his Majeſty's Ship the *Royal Oak*, the Fifth Ship aſtern of the Admiral: That the ſaid Captains were in Hearing and Sight of the ſaid Signal.

That the ſaid Ships, *Dorſetſhire*, *Rupert*, and *Royal Oak*, bore down towards the Enemy during the Engagement; but, as he apprehends, not within point-blank Shot, during any Part of the Engagement; nor into a Line with the Admiral, as he knows; but kept to Windward of the Line, till the *Namur* wore; which was towards the Evening: That, during the Engagement, there was Wind ſufficient for them to have bore down, and engaged in their Station, as near as the Admiral or *Marlborough* did.

That he ſaw the *Dorſetſhire* fire a great Number of Shot, but believes ſhe was not within random Shot; but did not obſerve any Shot from the *Rupert*, or *Royal Oak*.

That his Majeſty's Ships *Namur* and *Marlborough* were engaged, and hard preſſed by the Enemy; and the *Marlborough* was diſabled, having loſt her Main and Mizen Maſts; and was in ſome Danger of being deſtroyed by the Enemy, had not the *Namur* gone to her Aſſiſtance; and Captains *Burriſh*, *Ambroſe*, and *Williams*, were in Sight of the Diſtreſs of the *Marlborough*; and were capable of yielding Aſſiſtance to the *Marlborough*, had they bore down; but they did not.

That, during the Engagement, a Signal was made for the *Anne Galley* Fireſhip to bear down upon the Enemy: Soon after which a Boat was ſent to her, with a Lieutenant; and, thereupon, ſhe bore down; but was not covered or conducted by any Ship: That the *Dorſetſhire* was in Sight and View of the Fireſhip, and was capable of covering her; and that Captain *Mackey* paſſed cloſe ahead of the *Dorſetſhire*; and that ſhe was ſunk or deſtroyed without Effect.

Anthony Pinno.

Sworn this 2d *Sept.* 1745,
before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. You ſay the *Dorſetſhire* brought to, not within random Shot?

A. She was not within random Shot—I ſaw ſeveral Shot fall ſhort.

Q. Where was you quartered?

A. Upon the Middle Gun-deck.

Q. How long did the *Dorſetſhire* lie in the Poſition in which ſhe firſt brought to?

A. I don't know.

Q. When did ſhe bear away again?

A. She did not bear away till the Admiral wore.

Q. At what Time did you ſee the *Dorſetſhire?*

A. I ſaw her out of the Larboard Entering-port, about an Hour and an Half after beginning to engage.

Q. How far was the *Dorſetſhire* from the Enemy, at the Time ſhe firſt brought to, when you ſay ſhe was out of random Shot?

A. About a Mile and an Half.

Q. Did you ſee the *Dorſetſhire* lie to when the *Namur* wore?

A. She bore after us when we wore.

Q. How often did you ſee the *Dorſetſhire* between the Time of Bringing to, and the Time of Wearing?

A. Twice.

Q. What Diſtance was ſhe then from the Enemy?

A. Between Two and Three Miles.

Q. What was your Ship doing when you ſaw her?

A. She was then ſhot ahead.

Q. Did you ever ſee the *Dorſetſhire* fire Shot between the *Namur* and *Marlborough* at the Enemy?

A. No.

Q. After the Admiral in the *Namur*, and Captain *Cornwall* in the *Marlborough*, ſpoke to each other, Did the *Dorſetſhire* bear away immediately upon your Bearing away?

A. She bore away quickly afterwards.

Q. Did ſhe go as near the Enemy as the *Namur* and *Marlborough* did?

A. No.

Q. Where did you ſee the *Dorſetſhire?*

A. Upon the *Marlborough*'s Weather-Quarter.

Q. Did the Fireſhip bear down ahead or aſtern of the *Dorſetſhire?*

A. Ahead of the *Dorſetſhire.*

Q. Where was you then?

A. On the Main-gratings—and I ſaw the Fireſhip go ahead of the *Dorſetſhire* through the Ward-room Windows.

Q. Did you obſerve the *Dorſetſhire* bear away when the *Namur* did?

A. She bore away ſhortly after.

Q. Did ſhe come into a Line with the *Namur?*

A. I can't ſay.

Q. Did you ever ſee the *Dorſetſhire* ſo far ahead, and upon the *Marlborough*'s Weather-Bow, as to fire a Shot between you and the Enemy?

A. I can't ſay.

Q. Do you know the *Dorſetſhire*'s Poſition when the Boat was ſent to her from the *Namur?*

A. She was then upon the *Namur*'s Quarter.

Then he withdrew.

Lieutenant

Lieutenant *Robert Wilſon*, of the *Royal Oak*, called in, and ſworn.

His Affidavit read, as follows; *viz.*

Lieutenant Robert Wilſon, *late of the* Royal Oak, *maketh Oath*;

THAT he was Lieutenant on Board his Majeſty's Ship the *Royal Oak*, during the Month of *February*, 1743; which Ship was ſtationed, on the 11th of the ſaid Month of *February*, in the Line of Battle, in his Majeſty's Fleet in the *Mediterranean*, under the Command of Admiral *Mathews*.

That, about One o'Clock of that Day, the *Namur* and *Marlborough* bore down and engaged the *Real*, the *Spaniſh* Admiral's Ship, and his Second aſtern.

That Captain *Burriſh* in the *Dorſetſhire*, Captain *Ambroſe* in the *Rupert*, and Captain *Williams* in the *Royal Oak*, were in Sight of the Signal to engage, and of the Engagement.

The *Royal Oak* was in a Line with the Admiral; but was not in a Line with the *Marlborough*, though ſhe was then engaged: And this Deponent then ſaw the *Rupert* upon the Weather-Bow of the *Royal Oak*.

That the *Royal Oak* fired upon the Enemy about Two; but believes ſhe was not within Point-blank Shot; and that the *Rupert* was ſomething further from the Enemy, and neither of them in a Line with the *Marlborough*.

That this Deponent heard Captain *Williams* hail the *Rupert*; and aſked them, Why he did not bear down: And the *Royal Oak* was to Leeward of the *Rupert*, and to Windward of the *Marlborough*, during the ſaid Engagement.

That this Deponent ſaw the *Rupert* fire a great many Guns at the Enemy.

That, about Half an Hour paſt Three, the *Marlborough*'s Maſts were ſhot away; and that the *Dorſetſhire*, *Eſſex*, and *Rupert*, and *Royal Oak*, might have gone to her Aſſiſtance; but neither of them did.

Rob. Wilſon.

Sworn before me, this 12th
Day of *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. How did the *Dorſetſhire* behave during the Action?

A. I can't tell—I did not obſerve—But the *Dorſetſhire* might have gone down.

Q. How do you know ſhe might have gone down?

A. Becauſe ſhe was to Windward.

Q. Were you engaged?

A. Yes; we were engaged with the Enemy a good while.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. Did you ſee the *Marlborough*?

A. Yes.

Q. Did you ſee the Ship aſtern of her, the *Dorſetſhire*?

A. I did not ſee her.

Q. Had you not a Line of Battle given you?

A. No:—We came into the Line only Half an Hour before the Engagement began.

Q. Do you remember to have ſeen any Ship upon the *Marlborough*'s Weather-Quarter?

A. I don't remember ſeeing any.

Q. Did you ſee the Fireſhip?

A. Yes;—juſt as ſhe blew up.

Q. What was the Occaſion of her being deſtroyed?

A. I don't know.

Q. Did any Ships fire at her?

A. Yes: I believe the Ship aſtern of the *Real*.

Q. How many *Spaniſh* Ships were there aſtern coming up?

A. Five.

Q. Did any of them fire at the Fireſhip?

A. Yes:—I think ſome of them did.

A. Did you ſee any Ship bear away to aſſiſt the Fireſhip?

A. No.

Q. Could thoſe Ships ſtationed aſtern of the *Marlborough*, the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, have engaged thoſe Five Sail of *Spaniſh* Ships coming up?

A. Yes; they might, as they were to Windward.

Q. Did you not ſee any of our Ships bear down, juſt upon the Fireſhip's blowing up?

A. No.

Q. Did you ſee any of the Three Ships ahead of you bear down to aſſiſt the *Marlborough*?

A. No:—I don't remember that I ſaw any:—They might have bore down, and I not ſee them.

Q. Did the *Dorſetſhire* bear down?—Did you ſee any of thoſe Ships, at any time, bear down to aſſiſt the *Marlborough*?

A. I did not:—If the *Dorſetſhire* had bore down, I muſt have ſeen her at ſome time or other.

Q. Did you ſee the Fireſhip bear down?

A. No; I was then buſy upon Deck.

Q. When the Fireſhip blew up, Did you obſerve any Ship near enough to have ſuccoured her?

A. No; I did not.

Q. When ſhe blew up,—In what Poſition was the Admiral?

A. I can't tell; I did not ſee him.

Q. Was you to Windward, or to Leeward of the Ships ahead of you?

A. Rather to Leeward.

Q. Did you engage any of the Five *Spaniſh* Ships aſtern?

A. Yes.

Q. Was you within point-blank Shot of thoſe Five Sail of *Spaniſh* Ships coming up?

A. I think not.

Q. Do you think the Ships ahead of you could be within point-blank Shot of them?

A. No.

Q. Did

Q. Did you obſerve the *Dorſetſhire* engage, or not?

A. I did not obſerve it.

Q. Was you to Leeward of the Three Ships ahead of you?

A. We were to Leeward of Two ahead of us—the *Rupert* and *Eſſex*.—I don't remember to have ſeen the *Dorſetſhire*.

Q. Were there Four, or Five, *Spaniſh* Ships coming up?

A. There were Five coming up aſtern of the *Hercules*.

Q. When you obſerved the *Marlborough*'s Maſts gone, Where were the Three Ships between you and her?

A. I ſaw only the Two next to us; I did not ſee the Third:—The *Rupert* near in a Line with us; the *Eſſex* hauled off.

Q. When the *Marlborough*'s Maſts were gone, How did ſhe bear with reſpect to your Ship?

A. A great Diſtance ahead—upon our Lee-Bow.

Aſked by the Priſoner,

Q. Were the Five *Spaniſh* Ships coming up, in a Line with the *Real*, or to Leeward of her?

A. Rather to Leeward.—They kept pretty cloſe together.

Q. When the Fireſhip blew up,—Did they keep their Wind, or bear away after the *Real*?

A. I don't remember.

Then he withdrew.

Lieutenant *James Paterſon*, late a Maſter's Mate on board the *Royal Oak*, called in, and ſworn.

His Affidavit read; *viz.*

James Paterſon, *Maſter's Mate of the* Royal Oak, *maketh Oath*;

THAT he was Maſter's Mate on board his Majeſty's Ship the *Royal Oak*, in the *Mediterranean*, in the Month of *February*, 1743, in the Fleet commanded by *Thomas Mathews*, Eſq; of which *Richard Leſtock*, Eſq; was Vice-Admiral, and *William Rowley*, Eſq; Rear-Admiral, under the Command of the ſaid Admiral *Mathews*.

That the *Dorſetſhire*, *Rupert*, and *Royal Oak*, bore down with the Admiral a little Way, but not to their Station, and equal with the *Marlborough* and *Namur*; but the *Royal Oak* bore away a conſiderable Way to Leeward of the *Rupert* and *Eſſex*, which were the Ships immediately ahead of her; and alſo to Leeward of the *Dunkirk*, which was the Ship next aſtern of her; and that there was Wind ſufficient for them to have gone down, and engaged nearer, if they had thought proper.

That the *Marlborough* was hard preſſed, and diſabled, having loſt her Main and Mizen Maſt, and was in Danger of being deſtroyed by the Enemy; and the *Namur* was engaged in Fight: That the *Dorſetſhire*, *Rupert*, and *Royal Oak*, were capable of yielding Aſſiſtance to the *Marlborough*; but they, nor either of them, did.

That, between Four and Five o'Clock in the Afternoon, the *Anne Galley* Fireſhip bore down towards the *Real*; and ſhe was not covered or conducted by any of his Majeſty's Ships; and that the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, might have gone down with her, and covered her; and that they were not ſo engaged, but that they might have ſo done, but did not.

James Paterſon.

Sworn before me, this 9th Day of *September*, 1745.

Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Forecaſtle.

Q. What do you know of the *Dorſetſhire*?

A. I can't remember any thing of her.

Q. When the *Dorſetſhire* brought to,—Was ſhe within point-blank Shot of the Enemy?

A. I can't ſay.

Q. Did you ſee the *Dorſetſhire* lend any Aſſiſtance to the *Marlborough*?

A. No:—I did not.

Q. Was the *Dorſetſhire* as near the Enemy as the *Marlborough*?

A. No—to be ſure.

Q. Did you ſee the *Dorſetſhire* during that Day's Action?

A. Yes:—I ſaw her.

Q. Did you ſee her engage?

A. No.

Q. Did you ſee the Fireſhip blow up?

A. Yes.

Q. How far was ſhe to Windward of the Enemy?

A. Not a Cable's Length.

Q. Did you ſee the *Dorſetſhire* then?

A. I can't ſay;—I did not ſee any Ship near the Fireſhip at that time.

Q. How many *Spaniſh* Ships were there aſtern of the *Hercules*?

A. Five.

Q. Did you ſee any Ships bear down to engage them?

A. The *Royal Oak* did.

Q. Was you then to Windward or Leeward of the *Dorſetſhire*?

A. To Leeward.

Q. Was you then within Point-blank of the Enemy?

A. Yes, I believe we were.

Q. When you bore down, and was neareſt the Enemy, Was the *Dorſetſhire* then to Windward?

A. I believe ſhe was.

Q. At what Diſtance from you?

A. I can't ſay.

Q. Did you obſerve the *Marlborough*, when her Maſts were gone?

A. I obſerved her afterwards.

Q. Did you, or any Ship, go down properly to her Aſſiſtance?

A. No.

Q. Which of our Ships did you ſee then?

A. The *Eſſex* and *Rupert*; and, perhaps, I might ſee the *Dorſetſhire*.

Q. Could any have gone down?

A. Yes.

Q. Did you ſee any Ships, between you and the *Marlborough*, cloſely engaged with the Enemy?

A. Not that I remember.

Q. What Diſtance was the *Royal Oak* from the *Marlborough*, or *Real*, to the beſt of your Judgment?

A. About Two Miles and an Half from the *Marlborough*?

Q. Did you never ſee the *Dorſetſhire* engage the Enemy?

A. Not as I remember.

Q. Did the *Dorſetſhire* bear down as near to the Enemy as the Admiral did?

A. No.

Q. Did you obſerve any Ships ahead of you, and aſtern of the *Marlborough*, in a proper Line to engage the Enemy, as the *Marlborough* did?

A. No.

Aſked by the Priſoner,

Q. When did the *Royal Oak* bear down to engage the Five Sail of the Enemy aſtern?

A. I don't remember.

Q. Was it at the firſt or the laſt of the Engagement?

A. At neither.—It was ſome time after the Firing began.

Q. Did the *Dorſetſhire* bear down when you did?

A. No; I think not.

Q. When the *Royal Oak* bore down to engage, How were the other Ships that were neareſt to her?

A. The *Rupert*, *Eſſex*, and *Dorſetſhire*, were upon her Weather-Bow; and the *Dunkirk* a great Way aſtern upon her Weather-Quarter; and none of them coming down to the *Royal Oak*'s Aſſiſtance, ſhe hauled her Wind again.

Q. Did the *Royal Oak* bear down before or after the Fireſhip blew up?

A. I think it was before.

Q. What Diſtance was you from the *Dorſetſhire*, when you obſerved the *Dorſetſhire* not to bear down.

A. I don't remember.—I think ſhe did not bear down when the *Royal Oak* did?

Q. Did you haul up, becauſe the Ships ahead of you did not bear down?

A. Yes.

Q. What Diſtance was you from the headmoſt Ship of the Three, that were ahead of you, and aſtern of the *Marlborough*?

A. About a Mile and an Half, or Two Miles.

Q. Did you ſee the *Dorſetſhire*, when the Fireſhip blew up?

A. I can't remember that I did.—When I was looking at the Fireſhips, I then ſaw none near her to cover her.

Q. What Ship of the Enemy was next to the *Real*?

A. I don't know her Name.—There was One beſides the Five that were coming up.

Q. Did you ſee no Ship engage that one?

A. I can't ſay I did.

Then he withdrew.

Captain *Tom*, late Lieutenant of the *Norfolk*, called in, and ſworn.

His Affidavit read, as follows; *viz.*

Captain Philip Tom *maketh Oath*;

THAT he was Lieutenant of his Majeſty's Ship the *Norfolk*, in the *Mediterranean*, in the Month of *February*, 1743.

That, about Eleven o'Clock of the 11th of ſaid *February*, Admiral *Mathews* made the Signal to engage; and, about Half an Hour paſt Twelve, began to fire upon the *Real*.

That, he believes, all the Captains were in Sight of the Signal to engage, and of the Engagement.

That, ſome time after the *Norfolk* left off Firing, this Deponent ſaw the *Princeſſa* paſs by to Leeward of the *Norfolk*, on the other Tack; and afterwards, to the beſt of his Remembrance, ſhe laid her Head the ſame Way with the Fleet, and unbent her Main-topſail, which was ſplit from the Foot upwards to the Yard, and bent another; ſhe then being a little off the *Norfolk*'s Weather-Quarter.

That he ſaw the Fireſhip bear down upon the *Real*; and that ſhe went near the *Dorſetſhire*; and that ſhe was not covered, as he ſaw, by any Ship: But the *Dorſetſhire*, *Eſſex*, or *Rupert*, might have covered her, if they would; but they did not, as he knows; and the Fireſhip blew up without any Effect.

Phil. Tom.

Sworn before me, this 7th Day of *Sept.* 1745.

Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Middle-Gun-deck.

Q. Did you ſee the *Dorſetſhire* bring to?

A. No.

Q. Relate what you know of the *Dorſetſhire*.

A. I ſaw the *Dorſetſhire* engaged:—The Four Ships aſtern of the *Marlborough* made an Angle, and the Second of thoſe Ships ſeemed to be moſt to Windward;—and I ſaw the *Royal Oak* engaged alſo.

Q. Was the *Dorſetſhire* within Point-blank?

A. Yes, I think ſhe was.

Q. After what Time?

A. About Half an Hour paſt Two o'Clock.—I never ſaw her, till after the *Norfolk* left off engaging.

Q. Did you ſee the Fireſhip blow up?

A. Yes.

Q. Did

Q. Did you see the *Dorsetshire* bear down before the Fireship blew up?

A. I can't say.

Q. Did you see her bear down afterwards?

A. Yes, a little after.

Q. Was you right ahead of the Admiral?

A. I think he was a little to Windward.

Q. Was the *Dorsetshire* in a Line with the Admiral?

A. I saw her out of the Stern Windows, directly astern.

Q. What Distance was you from the *Dorsetshire*, when you engaged?

A. I cannot judge.

Q. Did you see the *Marlborough*, at the Time her Masts went away?

A. I saw her Masts go away.

Q. Was the *Dorsetshire* ever within the Reach of Small-Arms?

A. I can't tell.

Q. Was she ever within point-blank Shot of the Enemy?

A. I believe she was, when I saw her about Two o'Clock, before the Fireship blew up.

Q. Did you see the *Dorsetshire*, when the *Marlborough*'s Masts went away.

A. Yes, a little to Windward of the *Marlborough*.

Q. Did she then bear down to the *Marlborough*'s Assistance?

A. I can't say.

Q. Did she go down to the Assistance of the Fireship?

A. I can't say.

Q. Were the Three Ships astern of the *Marlborough* as closely engaged with the Enemy, as the *Marlborough*, *Namur*, and *Norfolk*, were?

A. I can't say:—The *Royal Oak* seemed engaged with the Second Ship of the Enemy, to Leeward of the other Ships.

Q. In what Position was the *Dorsetshire* at that Time?

A. I thought her to be then doing her Duty.—I saw her from our Weather-Quarter.

Q. Did you observe the *Spanish* Admiral's Second to be disabled by any Ship?

A. I do not know.

Asked by the Prisoner,

Q. Do you remember the *Real*'s Bearing away to Leeward?

A. I saw her bear away.

Q. Do you remember any Ship engaging the *Real*, about that Time?

A. I saw the *Marlborough* cease Firing some time, and the *Real* also:—Then the *Marlborough* renewed her Fire, and soon after the *Real* bore away.

Q. Did you see the *Dorsetshire*, at the Time the Fireship blew up?

A. I don't remember that I did.

Then he withdrew.

James Moore, Master of the *Norfolk*, called in, and sworn.

His Deposition was read, as follows; *viz.*

James Moore, *late Master of his Majesty's Ship* Norfolk, *at the Time of the late Engagement between his Majesty's Fleet and the Combined Fleet of* France *and* Spain, *off* Toulon, *on the* 11*th Day of* February, 1743, *maketh Oath*;

THAT the said Ship *Norfolk* was stationed at that Time the Ship next ahead, and the *Marlborough* the Ship next astern, of the *Namur*, in which Admiral *Mathews* hoisted his Flag.

That, about Noon, the Admiral, *Norfolk*, and *Marlborough*, bore down upon, and engaged the *Spanish* Admiral, and his Two Seconds.

That, about Three o'Clock, the *Marlborough* was disabled, having her Main and Mizen Masts shot away.

That some time in the Afternoon, the *Anne Galley* Fireship bore down towards the *Spanish* Admiral's Ship; but there did not any Ship bear down with and cover her; and she was destroyed, without doing any Execution upon the Enemy.

That his Majesty's Ship *Dorsetshire*, under the Command of Captain *George Burrish*, was stationed the next Ship astern of the *Marlborough*.

That the said Captain *Burrish* did not bear down with, and engage the Enemy in his Station, as the *Namur*, *Norfolk*, and *Marlborough* did; but kept with the said Ship *Dorsetshire* to Windward of his Station, during the greatest Part of the said Engagement.

That he did not go to the Assistance of the *Marlborough*, when she was so distressed; nor did he bear down with, and cover and assist the Fireship.

That the Wind was fair for him to have got into, and engaged in his Station, to have gone to the Assistance of the *Marlborough*, and to have covered the Fireship.

That Captain *Ambrose*, in his Majesty's Ship *Rupert*, did not bear down to the Assistance of the *Marlborough*, though he was in Sight of her Distress, and to Windward of his Station, and not engaged with any Ship; and though the *Essex* and *Dorsetshire*, which were ahead of him, were not in their Stations in the Line, but kept to Windward; nor did he bear down with, and cover the *Anne Galley* Fireship, when she bore away towards the Enemy, though she was in Sight of her when she bore down, and the Wind fair for him, and his Ship not engaged with the Enemy.

That Captain *Edmund Williams* in the *Royal Oak* did not go to the Assistance of the *Marlborough*, with his Majesty's Ship under his Command; nor did he engage the Enemy in his Station; but kept to Windward of his Station from the Enemy, during the greatest Part of the said Engagement.

James Moore.

Sworn the 2d of *Sept.* 1745, before me,
Cha. Fearne, Ju. Ad.

And he declared the same to be true.

Q. What Distance was the *Dorsetshire* from the

the Enemy, when ſhe firſt brought to after Bearing down?

A. Our Ship was engaged about an Hour and an Half, during which Time I could not make Obſervations: But, after we had left off engaging, I obſerved the Ships aſtern to be firing at a great Diſtance;—and, I think, the *Dorſetſhire* was not then within point-blank Shot of the Enemy, being near a Mile diſtant from them.

Q. Was you upon Deck the whole Time?

A. Yes.

Q. When the *Dorſetſhire* bore away the Second time, Was it before or after the Admiral wore?

A. I can't ſay,—I did not ſee any Ship bear down to aſſiſt the *Marlborough*, or cover the Fireſhip: But after the Admiral wore, they might be in a Line with him, and fire in paſſing.

Q. Were the Admiral and *Marlborough* engaged with the Enemy, after you had done engaging?

A. Yes.

Q. Was the *Dorſetſhire* engaged with the Enemy, as a *Britiſh* Man of War ought to engage, after the *Norfolk* had done engaging?

A. No.

Q. From what Part of the Ship did you ſee the *Dorſetſhire*?

A. Upon the Quarter-deck, through the Lieutenant's and my own Cabin Windows.

Q. Did you obſerve the *Marlborough*, when her Maſts were gone?

A. Yes.

Q. What was the Poſition of the *Dorſetſhire* then?

A. She was upon the *Norfolk*'s Weather-Quarter, and to Windward of the *Marlborough*, upon her Larboard-Quarter.

Q. Did you ſee the Fireſhip blow up?

A. Yes.

Q. Where was the *Dorſetſhire* then?

A. About a Mile from her.

Q. Did any Ship bear down with the Fireſhip?

A. No;—there was no Ship near the Fireſhip.

Q. Did the *Namur* bear away to the Aſſiſtance of the *Marlborough*?

A. She had then ſhot ahead, and was upon the *Marlborough*'s Weather-Bow.

Q. Was the Wind ſufficient to govern the Ships?

A. Yes.

Q. Did you ſee the *Dorſetſhire*, or any other Ship, bear down to aſſiſt the *Marlborough*, or cover the Fireſhip?

A. No; tho' they might have bore down into the Line, or to the Aſſiſtance of thoſe Ships, as eaſy as we bore down.

Q. What forced the *Real* to bear away?

A. I believe, the *Marlborough*'s Fire.

Q. Was there any thing to hinder the *Dorſetſhire*'s bearing down to the *Marlborough*'s Aſſiſtance?

A. As to the *Dorſetſhire*, in general, what I have to ſay is, She did not bear down to give any Aſſiſtance to the *Marlborough*, tho' ſhe might have bore down as eaſy as the *Norfolk* did.—There was Wind enough.

Q. Did you ſee the *Spaniſh* Admiral's Second aſtern?

A. Yes.

Q. Was ſhe diſabled?

A. I can't tell; the Ships obſtructed our Sight.—She fell off.

Q. Did any of our Ships force her away?

A. I cannot ſay; if any, it was the *Marlborough*.

Q. Did you obſerve her Topſail Yard to come down?

A. No, I can't ſay I did.—I think we had it in our Power to deſtroy their whole Fleet that Day, if we had behaved well; and I am ſorry we did not.

Q. Did the *Dorſetſhire* come ſo near the Enemy as you did?

A. No, not by a Mile.—When the Fireſhip blew up, ſhe was, at leaſt, a Mile from her; and ſhe was the neareſt of any.—The Fireſhip blew up about twice her Length from the *Real*.

Q. How near was you engaged?

A. Very near; the Shot went through and through.

Q. Could the *Dorſetſhire*'s Shot reach the Enemy?

A. No, I think not, to do Execution; only Duck and Drake Shot.—After the Admiral wore, the *Dorſetſhire* engaged, and ſo did ſeveral other Ships, and made a terrible Fire.

Asked by the Priſoner,

Q. When you bore down to engage, in what Line was it?

A. We went down in a Line of Battle, abreaſt.

Q. How did you bear down in the Morning?

A. We laſked away about Two or Three Points from the Wind; and then the Admiral, finding he could not reach the *French*, bore away before it, down upon the *Spaniards*.

Q. What Time did the *Norfolk* engage? Was it before the *Namur* and *Marlborough*?

A. As ſoon as the *Namur* began to engage, the Captain ſaid, Put the Helm aſtarboard, and begin; and ſo began to engage accordingly.

Q. In what Poſition was the *Hercules* then; and what Diſtance from the *Real*?

A. I don't know.

Q. Did you obſerve how the *Dorſetſhire* was, when you bore down to engage?

A. She was not then in a Line with us:—There were only Three that were quite in a Line at the Beginning of the Engagement; but the *Princeſſa* began in a little time after.

Q. What Diſtance was you from the *Dorſetſhire* at that time?

A. The *Dorſetſhire* was above a Mile aſtern, and to Windward.

Q. Do you mean after Engaging, or before?

A. Juſt

A. Juſt before engaging: There was nobody in the Line but the *Norfolk*, *Namur*, and *Marlborough*: It was a very crooked Line.

Q. Did you obſerve, by any Alteration made in the Diſpoſition of the Ships, between the Signal being made to engage, and your beginning to engage, that it muſt alter the Poſition of the Ships to Windward?

A. No: They might have engaged as ſoon as we.

Q. When the Captain bid you put the Helm a-ſtarboard, did you ſee the *Dorſetſhire* then?

A. No: Not then.

Q. Had the *Dorſetſhire* the ſame Sail ſet that you had?

A. I can't ſay what Sail any Ship had.

Q. Did you ever ſee the *Dorſetſhire* engage the *Real*?

A. I don't remember:—I ſaw only the *Namur* and *Marlborough* engage her.

Q. Where was the *Namur* after you had done Engaging?

A. Upon the Weather-Bow of the *Marlborough*; and lay alſo on the *Real*'s Weather-Bow.

Q. Where was the *Namur*, with regard to the *Norfolk*?

A. Aſtern of us, when ſhe engaged.

Q. Were our Four ſternmoſt Ships in a Line?

A. No:—The *Dorſetſhire* was to Windward of the *Marlborough*; the Three Ships aſtern of the *Dorſetſhire* to Windward of her; and ſeemed to make a Pair of Stairs.

Q. Which of them was neareſt the Enemy?

A. You was.

Then he withdrew.

Duncan Grant, Maſter of the *Somerſet*, called in, and ſworn.

His Affidavit read, as follows;

Duncan Grant, *Maſter of the* Somerſet, *maketh Oath*;

THAT he was Maſter of his Majeſty's Ship the *Somerſet*, in the *Mediterranean*, in the Month of *February*, 1743, in the Fleet commanded by *Thomas Mathews*, Eſq; of which *Richard Leſtock*, Eſq; was Vice-Admiral, and *William Rowley*, Eſq; Rear-Admiral, under the Command of the ſaid Admiral *Mathews*.

That, in the Morning of the 11th *February*, 1743, he the ſaid Admiral *Mathews* made a Signal for the Fleet to form in Line of Battle: That Captain *Burriſh* commanded the *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, Captain *Williams* the *Royal Oak*, Captain *Pett* the *Princeſſa*, and Captain *Sclater* the *Somerſet*; and were all ſtationed in the Centre Diviſion.

That all the above Ships, except the *Royal Oak*, who came into the Fleet a ſmall time before the Engagement hereafter mentioned, were in Sight and View of the ſaid Signal; and that the Admiral, with the Centre Diviſion, about Ten o'Clock, were about Four or Five Miles from the Combined Fleet: That, about, Half an Hour paſt Ten o'Clock, Signal was made to engage; and all the Captains were in View of ſuch Signal: And, about One o'Clock, the Admiral bore down to engage the Enemy.

That the *Marlborough* was hard preſſed, and diſabled, having loſt her Main and Mizen Maſt; and was in Danger of being deſtroyed by the Enemy: That the *Dorſetſhire*, *Rupert*, and *Royal Oak*, were capable of yielding Aſſiſtance to the *Marlborough*; but they, nor either of them, did.

That, between Four and Five o'Clock in the Afternoon, the *Anne Galley* Fireſhip bore down towards the *Real*; and ſhe was not covered or conducted by any of his Majeſty's Ships; and that the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, might have gone down with her, and covered her; and that they were not ſo engaged, but that they might have ſo done, but did not.

That the *Somerſet* bore down with the Admiral and *Marlborough*, and engaged in a Line with the *Namur* and *Marlborough*: That ſhe continued engaged with the Third Ship ahead the *Real*, about an Hour and Half, when ſhe bore away, and the *Somerſet* edged a little Way after her; after which the *Poder* came up, and engaged the *Somerſet* upwards of Half an Hour within Muſquet-ſhot.

That the *Somerſet* ſhooting ahead, and the *Poder* falling aſtern, by reaſon (as he apprehends) of the *Somerſet*'s having ſhot away the Head of her Fore-top Maſt, the *Berwick* took her up, and engaged her.

That, after Three o'Clock, the *Somerſet* hauled her Wind, and made the beſt of her Way to Admiral *Mathews*; and, about that Time, he ſaw the *Marlborough*'s Maſts gone.

That the *Princeſſa* bore down equally with the Admiral, *Marlborough*, *Norfolk*, and *Somerſet*; and engaged the *Poder*, when the Admiral began to engage.

Duncan Grant.

Sworn before me, this
24th *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Relate what you know of the *Dorſetſhire*'s Behaviour, during the Engagement.

A. After we had done engaging, about Three or Four o'Clock, I ſaw the Fireſhip bear down, and ſaw her blow up, and no Ship was then near her; tho', during the Engagement, there was Wind enough for any Ship near, to have gone down, and covered her.

Q. Did you ſee the *Dorſetſhire*?

A. I can't ſay I did:—I ſaw four Ships aſtern of the *Marlborough*, but I did not know which was the *Dorſetſhire*.

Q. Did none of thoſe Four bear down?

A. No.

Asked by the Priſoner,

Q. Did you ſee no Ship near the Fireſhip, when ſhe blew up?

A. No:—There were Four Ships aſtern that might have gone down to cover her.

Q. After the *Somerſet* left off Engaging, Did you obſerve the *Dorſetſhire* engage?

A. I can't ſay, I did.

Q. After you left off Engaging, Did you ſee the *Marlborough?*

A. Not till after ſhe had loſt her Maſts.

Court aſked,

Q. Did you ſee any Ships to Windward that might have gone down to her Aſſiſtance?

A. There were Four Ships aſtern of her, and to Windward, which might have gone down to her Aſſiſtance, but did not.

Then he withdrew.

Owen Griffith, Maſter of the *Cambridge*, called in, and ſworn.

His Depoſition was read, as follows; *viz.*

Owen Griffith, *late Maſter of his Majeſty's Ship* Cambridge, *maketh Oath*;

THAT he was Maſter of the ſaid Ship on the ſaid Eleventh of *February*, 1743. which Ship was ſtationed the Second Ship ahead in Vice-Admiral *Leſtock*'s Diviſion of the Fleet in the *Mediterranean*, under the Command of Admiral *Mathews*.

That, about Ten o'Clock, the Admiral made the Signal for the Line ahead, to the beſt of his Remembrance.

That, before Twelve o'Clock, he made the Signal to engage.

That, about One o'Clock, Admiral *Mathews* began to engage the Enemy, as did the *Marlborough*.

That the Four Ships in the Rear of the Admiral's Diviſion did fire at the Enemy; but believes none of them were in their Station in the Line of Battle, while the Fleet had the Larboard-Tack on board; and believes the *Eſſex*, *Rupert*, and *Royal Oak*, were not within point-blank Shot, while their Heads lay to the Southward.

That he believes the *Dorſetſhire* was within point-blank Shot of the Enemy ſome time after the *Marlborough*'s Maſts were ſhot away; but believes ſhe was not within point-blank Shot at any other time before.

That the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, might have bore down, and aſſiſted the *Marlborough*, for any thing that appeared to this Deponent to the contrary, the ſaid Ships being all the time to Windward of their Stations, when their Heads were to the Southward.

That the *Marlborough* was a conſiderable time engaged with the Enemy; and was diſabled, having her Main and Mizen Maſts ſhot away; and that the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, might have gone down to her Aſſiſtance.

That the *Real*, the *Spaniſh* Admiral's Ship, was diſabled in the Engagement; and he believes it was about Three o'Clock when the *Anne Galley* Fireſhip bore down to burn her; and that there did not any Ship go down with and cover her, as he can remember; but that the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, or any of them, might have done it: That the Fireſhip blew up a little ſhort of the *Real*, and before ſhe did any Execution.

Owen Griffith.

Sworn this 3d *September*, 1745, before me,

Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. What Diſtance was you from the *Dorſetſhire*, when the Engagement began?

A. About Three Miles and an Half.

Q. Was the *Dorſetſhire* within Gun-ſhot of the Enemy?

A. After ſhe bore down, ſhe was—A little after Three o'Clock, but before the Fireſhip blew up, I then ſaw the *Dorſetſhire* about a Point under the *Cambridge*'s Bow, our Head then lying to the South.

Q. What Ship was ſhe then engaged with?

A. I can't ſay.

Q. What Time did ſhe bear down?

A. A little after Three o'Clock—I ſaw her bear away; and juſt after we had done Engageing, I ſaw her about a Point upon our Lee-Bow.

Q. How long, after the *Marlborough*'s Maſts were gone, did you ſee the *Dorſetſhire* bear down?

A. About a Quarter of an Hour after: For then ſomebody ſaid, Well done, *Dorſetſhire*; ſhe is bearing down to the *Marlborough*'s Aſſiſtance.

Q. Do you think ſhe was of Aſſiſtance to the *Marlborough?*

A. I think ſhe was of ſome Aſſiſtance.

Q. Did the *Dorſetſhire* bear down within Point-blank of the Enemy?

A. I believe ſhe did.

Q. How long had the *Namur* and *Marlborough* been engaged, before the *Dorſetſhire* was within Point-blank?

A. About Two Hours.

Q. Do you think, that at any time, while the *Dorſetſhire* engaged, ſhe was within Muſquet-ſhot?

A. No.

Q. Was ſhe, at any time, to Leeward of the *Marlborough?*

A. No:—I never obſerved it.

Q. Did you obſerve the *Hercules* damaged?

A. No.

Q. Do you remember her Bearing away, at any time, under the *Spaniſh* Admiral's Quarter?

A. I don't remember it.

Q. How

Q. How long did you obſerve the *Dorſetſhire* to engage?

A. I believe about Half an Hour—I can't ſay exactly.

Q. How many *Spaniſh* Ships were there aſtern of the *Spaniſh* Admiral?

A. Four, beſides the *Hercules*, which made Five.

Q. Did you engage any of thoſe Ships?

A. We engaged the Four as they paſſed us:—I am ſure there were but Four of them.

Q. Were they crouding all the Sail they could?

A. I don't think they were.

Q. Do you think thoſe Four Ships could have fetched to Windward of the *Dorſetſhire*?

A. I don't think they could.

Q. What Time of the Day did thoſe Four Ships paſs you?

A. Between Three and Four o'Clock.

Q. How near was you to thoſe Four Ships, when you fired?

A. I can't ſay exactly:—I believe within Three-quarters of a Mile:—We received a Shot that went through all.

Q. Did the *Dorſetſhire* engage any one of thoſe Four Ships?

A. I can't ſay whether ſhe engaged the *Hercules*, or *Real*:—As to the Four ſternmoſt Ships, after the Admiral wore, there was a ſmart Fire; but I can't ſay from what Ships.

Q. Did you obſerve any of thoſe Four Ships fire at the Fireſhip?

A. I think the headmoſt did; but her Shot did not reach.

Q. Did the *Dorſetſhire* engage any of thoſe Ships?

A. I can't ſay:—If ſhe did, it was after ſhe wore.

Q. Did any of our Ships aſtern of the *Marlborough* engage thoſe Ships?

A. I can't well ſay:—I ſaw Firing; but I don't think they could do Execution; for I ſaw many Shot fall ſhort.

Q. Was you in a Line with the *Dorſetſhire*?

A. We were in the *Dorſetſhire*'s Wake when we began to fire; but after we had done, the *Dorſetſhire* was to Leeward of us; which makes me believe ſhe was within Point-blank of the Enemy:—Our Ship was within Three-quarters of a Mile of thoſe *Spaniſh* Ships, when we began to engage with the headmoſt of them.

Q. What Wind had you? Was there a commanding Breeze?

A. Yes: But it ſlackened, till towards the Evening, when it freſhened again.

Asked by the Priſoner,

Q. Did you obſerve the Admiral firſt bear away?

A. Yes.

Q. Did you obſerve the *Dorſetſhire* bear away, at the ſame time?

A. I can't ſay I did:—I ſaw only Three Ships bear away, which I took to be the *Marlborough*, Admiral, and *Norfolk*.

Q. When the Admiral and *Marlborough* bore away to engage, did you obſerve no Ship to bear away and engage the *Hercules*, at that time?

A. I can't ſay I did.

Q. Did you ſee any Ship engage the *Hercules*?

A. I ſaw the *Dorſetſhire* fire; but I can't ſay whether at the *Hercules*, or not.

Q. Of the Four Ships that you did not obſerve to bear down when the Admiral did, which was the Leewardmoſt?

A. I think, the *Royal Oak*.

Q. How did the *Royal Oak* bear from you?

A. She was to Windward.

Then he withdrew.

Captain *Stepney*, of the *Neptune*, called in, and ſworn.

His Depoſition was read, as follows;

Captain George Stepney, *late Commander of his Majeſty's Ship* Neptune, *maketh Oath*;

THAT he was Captain of the ſaid Ship during the Month of *February*, 1743; on board which Ship Vice-Admiral *Leſtock* hoiſted his Flag.

That, about Half an Hour paſt Nine o'Clock in the Morning of the Eleventh of the ſaid Month of *February*, Admiral *Mathews* made a Signal for the Line of Battle ahead; and, about Half an Hour paſt Ten, a Signal was made to engage the Enemy.

That, about Half an Hour paſt One o'Clock, the *Namur* and *Marlborough* bore down upon, and engaged the *Real*, the *Spaniſh* Admiral's Ship, and his Second aſtern.

That Captain *Burriſh*, in his Majeſty's Ship *Dorſetſhire*, Captain *Ambroſe* in the *Rupert*, and Captain *Williams* in the *Royal Oak*, were ſtaſtioned aſtern of the *Marlborough*; and were in Sight of the Signal to engage, and of the Engagement; but they, or any of them, did not bear down, and engage the Enemy in their Stations, as the *Namur* and *Marlborough* did; but kept to Windward of their Stations during the ſaid Engagement.

That, about Half an Hour paſt Three, the *Marlborough* was diſabled in the ſaid Engagement, having her Main and Mizen Maſts ſhot away; and continued afterwards engaged with his Majeſty's Enemies, and was hard preſſed in the ſaid Fight.

That, between Four and Five o'Clock, the *Anne Galley* Fireſhip went down towards the *Real*; and that ſhe was not covered or conducted by any of his Majeſty's Ships; and the *Dorſetſhire*, *Rupert*, and *Royal Oak*, might have bore down with, and covered her: But neither of them did; nor did either of them go and aſſiſt

the

the *Marlborough*; which they might have done, being reſpectively to Windward of their Stations.

Geo. Stepney.

Sworn before me, this 11th Day of *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. What Diſtance was you from the *Dorſetſhire*, when the Engagement firſt began?

A. About Five Miles.

Q. Did the *Dorſetſhire* continue to bear down with the Admiral?

A. No.

Q. How far did ſhe bring to from the Enemy?

A. I can't ſay.—But not within Point-blank.

Q. Did you ſee the Fireſhip?

A. Yes.

Q. Did you ſee any Ship bear down to her Aſſiſtance?

A. No.

Q. Did any of them bear down to aſſiſt the *Marlborough*?

A. No.

Q. How long did the *Dorſetſhire* lie out of Point-blank?

A. After the *Marlborough* loſt her Maſts, ſhe edged down nearer; but I can't ſay, whether, after that, ſhe was within Point-blank, or not; but I am ſure ſhe was not before.

Q. Were the Enemy under Sail at that Time? And with what Ship did the *Dorſetſhire* engage?

A. I believe the *Hercules*, the *Spaniſh* Admiral's Second.

Q. Do you think ſhe was within Point-blank at laſt?

A. I don't know but ſhe might.—I can't be certain.

Q. What Time did ſhe begin to engage that *Spaniſh* Ship?

A. About Three o'Clock.

Q. Did ſhe bear down immediately upon the *Marlborough*'s loſing her Maſts?

A. I can't ſay, whether immediately, or quickly after.

Q. Did ſhe engage under Sail, or bring to?

A. I can't tell.

Q. How many *Spaniſh* Ships were there aſtern of the *Hercules*?

A. Four or Five *Spaniſh* Ships; I can't be poſitive which.

Q. Did you obſerve the *Marlborough*, juſt after her Maſts were gone?

A. Yes.

Q. Did you obſerve the *Dorſetſhire* then?

A. No.

Q. Did you then obſerve any Ships bear down to the *Marlborough*'s Aſſiſtance?

A. No.

Q. Did you obſerve the *Spaniſh* Admiral's Second, at any time, to ſhoot under his Lee-Quarter?

A. No.

Q. Did you obſerve the *Marlborough*, when ſhe was diſabled?

A. Yes.

Q. Did you obſerve any Ship to go between the *Marlborough* and the Enemy, to take the Fire off from the *Marlborough*?

A. No.

Q. Do you think the *Dorſetſhire* gave any Aſſiſtance to the *Marlborough*?

A. After her Maſts were gone, I think ſhe did.

Q. Was it in the *Dorſetſhire*'s Power to have bore down to her Aſſiſtance?

A. Undoubtedly it was.

Q. What Quarter of the *Marlborough* was the *Dorſetſhire* upon, when you apprehend ſhe was of Aſſiſtance?

A. She was then to Windward of her.

Q. When the *Marlborough* loſt her Maſts, what Diſtance might the *Neptune* be from her?

A. Between Three and Four Miles.

Aſked by the Priſoner,

Q. Do you ſpeak poſitively, that the *Dorſetſhire* was not within Point-blank, before the *Marlborough* loſt her Maſts?

A. Not poſitively; but I believe ſhe was not.

Q. Do you think the *Dorſetſhire* was in a Line with the *Namur*, after the *Namur* hauled to Windward?

A. I believe ſhe might.

Then he withdrew.

Lieutenant *Scrope*, of the *Neptune*, called in, and ſworn.

His Affidavit read, as follows; *viz.*

Lieutenant Carr Scrope, *late of his Majeſty's Ship the* Neptune, *maketh Oath*;

THAT he was Lieutenant on board the ſaid Ship *Neptune* on the Eleventh *February*, 1743; on board which Ship Vice-Admiral *Leſtock* hoiſted his Flag.

That, between Nine and Ten o'Clock in the Forenoon of the ſame Day, Admiral *Mathews* made a Signal for the Line of Battle ahead.

That, between Ten and Eleven o'Clock, or about Eleven, the Admiral made a Signal to engage the Enemy: That Captain *Burriſh* commanded his Majeſty's Ship the *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, and Captain *Williams* the *Royal Oak*; which Ships were ſtationed, in the Line of Battle, in the Centre Diviſion, and aſtern of the Admiral; and were reſpectively in Sight of the ſaid Signal to engage.

That, about One, or Half an Hour paſt One o'Clock of that Day, the Admiral began to engage the *Real*, the *Spaniſh* Admiral's Ship; as did the *Marlborough*.

That

That the *Marlborough* had her Main and Mizen Maſts ſhot away, and ſeemed to be diſabled, and in great Diſtreſs.

That the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, were reſpectively to Windward, and aſtern of the *Marlborough*, and in Sight of her Diſtreſs; and they, or any of them, might have gone down to her Aſſiſtance, had the Captains of thoſe Ships thought proper; but none of them did ſo, as this Deponent obſerved: And that neither of the ſaid Ships bore down, and engaged the Enemy in their Stations, in the Line of Battle, as near as the Admiral and *Marlborough* did; but might have done it: And that they kept to Windward of their Stations, and out of point-blank Shot of the Enemy; though they did fire at the Enemy at too great a Diſtance, as this Deponent believes.

Carr Scrope.

Sworn before me, this 17th
September, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. What Diſtance was you from the *Dorſetſhire*, when the Admiral bore down?

A. I believe, about Five Miles.

Q. Did you obſerve the *Dorſetſhire* bear down, and aſſiſt the *Marlborough*?

A. I ſaw none but the *Marlborough* and *Namur* go down.

Q. Where was you quartered?

A. Upon the Lower-Gun-deck.

Q. Did you ſee the *Dorſetſhire* bring to, or bear down?

A. No; I did not ſee her; I was but little upon Deck, after I went down to my Quarters.— I ſaw no other Ship bear down but the *Marlborough* and *Namur*.—I ſaw none of the Four Sail, aſtern of the *Marlborough*, and to Windward, go down.

Q. Did you obſerve the *Spaniſh* Ships coming up? Whether they were Four or Five Sail?

A. There were Four together.—Five in all aſtern of the *Spaniſh* Admiral.

Q. Are you ſure, there were only Four *Spaniſh* Ships aſtern of the *Hercules*?

A. I cannot be poſitive.

Q. Did you ſee the *Marlborough*, about the Time ſhe loſt her Maſts?

A. I ſaw her without her Maſts, and no Ship to aſſiſt her.—And I ſaw the Wreck of the Fireſhip, after ſhe blew up; but I ſaw no Ship bear down to either of their Aſſiſtance.

Then he withdrew.

Lieutenant *Lampriere*, of the *Neptune*, called in, and ſworn.

His Affidavit read, as follows; *viz.*

John Lampriere, *late Lieutenant of his Majeſty's Ship* Neptune, *maketh Oath*;

THAT he was Lieutenant on board the ſaid Ship during the Month of *February*, 1743, in his Majeſty's Fleet in the *Mediterranean*, under the Command of Admiral *Mathews*.

That, on the 11th of the ſaid Month of *February*, between Nine and Ten o'Clock in the Forenoon, the Admiral made a Signal for the Line of Battle ahead; and, between Ten and Eleven o'Clock, he made a Signal to engage the Enemy.

That the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, were ſtationed aſtern of the *Marlborough*, in Admiral *Mathews*'s Diviſion of the ſaid Fleet.

That, about Half an Hour paſt One o'Clock, the Admiral and *Marlborough* bore down upon, and engaged the *Real*, the *Spaniſh* Admiral's Ship, and his Second aſtern; and that the *Marlborough* was diſabled in the ſaid Engagement, having her Main and Mizen Maſts ſhot away; and appeared to be in great Diſtreſs, when the Fireſhip blew up: And that the Captains of the ſaid Four Ships, ſtationed aſtern of the *Marlborough*, were reſpectively in Sight of the ſaid Engagement, and of the Diſtreſs the *Marlborough* was in: Upon the Fireſhip's blowing up, ſaw no Ship go to her Aſſiſtance.

That he was below at his Quarters; therefore did not ſee the Fireſhip going down upon the *Real*; but, upon the Fireſhip's blowing up, the *Neptune*'s Men, upon Deck, gave ſome Shouts; and cried, The *Real*'s was on Fire: On which (being at his Quarters) went, as well as many more quartered below, and looked out of the Larboard-Ports, and ſaw the Smoke and Wreck of the Fireſhip; which appeared to be cloſe under the *Real*'s Starboard-Counter: But this Deponent did not ſee any of the *Britiſh* Ships near her, in order to have covered her; that the *Marlborough* appeared to be the neareſt: And this Deponent is of Opinion, that there were proper and ſufficient Ships at hand to have performed that important Service.

John Lampriere.

Sworn before me, this 20th
September, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. What Diſtance was you, at the Beginning of the Engagement, from the Admiral?

A. About Six Miles.

Q. Did the Four Ships aſtern of the *Marlborough* bear down with the Admiral?

A. Yes; I ſaw them bearing down; and then went down to my Quarters.

Q. Did you ſee the *Marlborough*, when her Maſts were loſt?

A. Yes.

Q. Did you ſee any Ship bear down to ſuccour her?

A. None.

Q. Did you ſee no Ship near the Fireſhip, when ſhe blew up?

A. No.

Q. How many *Spaniſh* Ships were there aſtern of the *Real*?

A. Six.

Q. Where was you quartered?

A. Upon the Lower-Gun-deck.

Q. Are you poſitive as to the Number of Ships aſtern of the *Real?*

A. Yes; I counted Six before I went down to my Quarters.

Q. Were there Four, Five, or Six, as far from their Admiral as you was from our Admiral?

A. I counted Six aſtern of the *Real*; ſome at a greater Diſtance than others.

Q. Did your Ship fire at any of thoſe Ships?

A. Yes.

Q. How many Sail were there, when you began to fire?

A. Six; One cloſe to the *Real*, and Five at ſome Diſtance.

Then he withdrew.

Lieutenant *Pearſe*, of the *Neptune*, called in, and ſworn.

His Depoſition was read, as follows; *viz.*

Lieutenant Vincent Pearſe, *late of his Majeſty's Ship the* Neptune, *maketh Oath*;

THAT he was Lieutenant on board the ſaid Ship during the Month of *February*, 1743; which Ship was ſtationed, on the 11th of ſaid *February*, in the Line of Battle, in his Majeſty's Fleet in the *Mediterranean*, under the Command of Admiral *Mathews*.

That, between Nine and Ten in the Morning of the 11th of ſaid *February*, a Signal was made for a Line ahead; and, between Ten and Eleven, a Signal was made to engage the Enemy.

That, about Half an Hour paſt One o'Clock of that Day, the *Namur* and *Marlborough* bore down, and engaged the *Real*, the *Spaniſh* Admiral's Ship, and his Second aſtern.

That Captain *Burriſh* in the *Dorſetſhire*, Captain *Ambroſe* in the *Rupert*, and Captain *Williams* in the *Royal Oak*, were in Sight of the Signal to engage, and of the Engagement.

That, about Three, the *Marlborough*'s Maſts were ſhot away; and that the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, might have gone to her Aſſiſtance.

That he ſaw the *Anne* Galley Fireſhip go down towards the *Real*, between Four and Five o'Clock; and that ſhe was not covered or conducted by any Ship of his Majeſty's Fleet: That the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, might have gone down, and covered her; but neither of them did: And none of them engaged with the Enemy at that time.

Vin. Pearſe.

Sworn this 13th Day of *Sept.* 1745.

And he declared the ſame to be true.

Q. Did you ſee the *Dorſetſhire* ever engaged?

A. No.

Q. Where was you quartered?

A. Upon the Upper-Deck.

Q. How many *Spaniſh* Ships were there aſtern of the *Real?*

A. I believe, Six—I do not know certainly whether Five or Six.—There was only one cloſe aſtern of the *Real*.

Q. How far did thoſe Ships go to Leeward of you?

A. Four or Five Miles.

Q. How far was you aſtern of our Admiral when the Engagement firſt began?

A. About Six Miles.

Q. How did theſe *Spaniſh* Ships then bear from you?

A. We were about abreaſt of the Second Ship.

Q. Do you know any thing of the *Dorſetſhire?*

A. I can't ſay any thing particularly of her.

Q. Could thoſe *Spaniſh* Ships have fetched the *Dorſetſhire?*

A. I believe they could.

Q. How was the Wind?

A. Upon our Larboard-Quarter.

Q. Did you ſee the *Dorſetſhire*, and the other Ships aſtern, bear down when the Admiral and *Marlborough* did?

A. No.

Q. Did you ſee the *Marlborough* after her Maſts were gone?

A. I did.

Q. Did you ſee any Ships bear down to her Aſſiſtance?

A. No.

Q. Did you ſee any of our Ships, between the Admiral and you, cloſely engaged?

A. Only the *Marlborough*.

Q. Do you remember ever to have ſeen the *Dorſetſhire* cloſely engaged?

A. No; I did not mind her.

Then he withdrew.

Lieutenant *Ericks*, of the *Neptune*, called in, and ſworn.

His Depoſition read, as follows; *viz.*

James Ericks, *late Lieutenant of his Majeſty's Ship* Neptune, *maketh Oath*;

THAT he was Lieutenant on board the ſaid Ship during the Month of *February*, 1743, in his Majeſty's Fleet in the *Mediterranean*, under the Command of Admiral *Mathews*.

That, on the 11th of the ſaid Month of *February*, between Nine and Ten o'Clock in the Forenoon, the Admiral made a Signal for the Line of Battle ahead; and about Eleven o' Clock, he made a Signal to engage the Enemy.

That Four Ships were ſtationed aſtern of the *Marlborough*, in Admiral *Mathews*'s Diviſion of the ſaid Fleet; but cannot ſay what Ships they were.

That, about Half paſt One o'Clock, the Admiral and *Marlborough* bore down upon

and engaged the *Real*, the *Spaniſh* Admiral's Ship, and his Second aſtern; and that the *Marlborough* was diſabled in the ſaid Engagement, having her Main and Mizen Maſts ſhot away; and appeared to be in great Diſtreſs: And that the Captains of the ſaid Four Ships, ſtationed aſtern of the *Marlborough*, were reſpectively in Sight of the ſaid Engagement, and of the Diſtreſs the *Marlborough* was in; and were capable of yielding her Aſſiſtance, as this Deponent believes: But that the ſaid Captains did not bear down and engage, as the Admiral and *Marlborough* did; nor did they go to the Aſſiſtance of the *Marlborough*, but kept to Windward of their Stations in the Line of Battle during all or the greateſt Part of the ſaid Engagement, as this Deponent believes.

That, about Four o' Clock, the *Anne Galley* Fireſhip bore down towards the *Real*, in order to burn her, as this Deponent believes; and that ſhe was not covered by any of his Majeſty's Ships; but was blown up without any Effect: And that the ſaid Four Ships might have bore down, and covered her, had the Captains of thoſe Ships thought proper ſo to have done: And that the ſaid Ships were at that time not in Action, as he believes.

James Ericks.

Sworn before me, this 20th
September, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. What Diſtance was you from thoſe Four Ships aſtern of the *Marlborough*, when the Engagement began?

A. About Five Miles.

Q. Where was you quartered?

A. Upon the Middle-Gun-deck.

Q. Did you ſee the *Dorſetſhire* engage?

A. No.

Q. Did you ſee the *Marlborough*, before her Maſts were gone?

A. No:—I ſaw her after.

Q. Did you ſee any Ships go down to the *Marlborough*'s Aſſiſtance?

A. No.

Q. Did you obſerve the *Spaniſh* Admiral?

A. Yes.

Q. Did you ſee any Ship near him?

A. Yes: There was one pretty near him, and Five more aſtern, as I think; but I am not ſure.

Then he withdrew.

Iſaac Chapman, Maſter of the *Neptune*, called in, and ſworn.

His Depoſition was read, as follows; *viz.*

Iſaac Chapman, *late Maſter of his Majeſty's Ship* Neptune, *maketh Oath*;

THAT he was Maſter on board the ſaid Ship, on the 11th of *February*, 1743, in the Engagement that Day off *Toulon* in the *Mediterranean*.

That *Thomas Mathews*, Eſquire, was Commander in Chief of his Majeſty's Fleet in the *Mediterranean* Sea; and that, on the Morning of the 11th of *February*, he made a Signal for the Line of Battle ahead; and that at the ſaid time *George Burriſh* commanded his Majeſty's Ship *Dorſetſhire*, Captain *John Ambroſe* the *Rupert*, and Captain *Edmund Williams* the *Royal Oak*; which Ships appeared to be ſtationed in the Rear of the Centre Diviſion of his Majeſty's Fleet, and were in Sight and View of the Signal aforeſaid; and that the Combined Fleets of *France* and *Spain*, about Noon of the ſaid Day, were about Two or Three Miles diſtant from the Centre Diviſion of his Majeſty's Fleet: That, about Ten or Eleven o' Clock in the Morning of the ſaid Day, the ſaid Admiral made a Signal to engage the Enemy; and, about One or Two, he, together with the *Marlborough*, began to engage and join Battle with his Majeſty's Enemies: That Captain *Burriſh*, Captain *Ambroſe*, and Captain *Williams*, were in Sight of the ſaid Signal, and the Engagement.

That Captain *Burriſh*, Captain *Ambroſe*, and Captain *Williams*, did not bear down equally with the Admiral and *Marlborough*; neither did they, or any of them, engage the Enemy as near as the Admiral or *Marlborough*; but kept to Windward of the Admiral and *Marlborough*.

That, from the Beginning of the Engagement, till about Five o'Clock, all the Captains aforeſaid were to Windward, and out of Gun-ſhot on Point-blank; that Captain *Williams*, who was the ſternmoſt of the Centre Diviſion, was, during the ſaid time, farther to Leeward than any Ship aſtern of the *Marlborough*; that they all had Wind ſufficient to have gone nearer the Enemy; and that the *Dorſetſhire* could have gone down, and engaged the *Hercules*; and that the *Rupert* and *Royal Oak* could have gone down in a Line with the *Marlborough*; and the *Rupert* might have engaged the *Hercules* at a Diſtance; but there was no Ship for the *Rupert* and *Royal Oak* properly to have engaged, till towards the End of the Engagement.

That, during the Engagement, there were a great many Guns fired from the *Dorſetſhire*, *Rupert*, and *Royal Oak*, when they were not within Gun-ſhot of the Enemy on Point-blank.

That his Majeſty's Ship *Marlborough* was hard preſſed, and engaged in Fight with his Majeſty's Enemies; and the *Marlborough* had her Main and Mizen Maſts ſhot away, and was in Danger of being deſtroyed by the Enemy; and that Captain *Burriſh*, *Ambroſe*, and *Williams*, were in Sight of the *Marlborough*'s Diſtreſs, and were reſpectively capable of yielding her Aſſiſtance.

That neither the *Dorſetſhire*, *Rupert*, or *Royal Oak*, did bear down, to yield the *Marlborough* the Aſſiſtance they might have done.

That,

That, about Four o'Clock, the *Anne Galley* Fireſhip bore down towards the *Real*, in order to burn her; and that ſhe was not covered by any Ship whatſoever.

That the *Dorſetſhire*, *Rupert*, and *Royal Oak*, were in Sight and View of the ſaid Fireſhip, and at hand ready to have covered her.

That the Fireſhip was blown up, and ſunk by his Majeſty's Enemies, without Effect, for want of Aſſiſtance, as this Deponent believes.

J. Chapman.

Sworn before me, this
17th *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Did you not ſee the *Dorſetſhire* bear down, between Three and Four o'Clock, and engage?

A. I can't ſay that I ſaw her bear down, ſo as to engage within Point-blank.

Q. What Diſtance was you from the *Dorſetſhire*, when the Engagement began?

A. About Five Miles.

Q. Did you ſee the *Marlborough*, when her Maſts went away?

A. I ſaw her after ſhe loſt them.

Q. Did the *Dorſetſhire* bear down to her Aſſiſtance?

A. I did ſee her bear down in the Afternoon, after the Fireſhip blew up; but I can't ſay I ſaw her within point-blank Shot.

Q. Was ſhe diſabled?

A. I can't tell.

Q. How far was you from the *Dorſetſhire*, when you obſerved the *Marlborough*'s Maſts to be gone?

A. Not much nearer than before.

Q. How long was ſhe engaged before her Maſts went away?

A. About an Hour.

Q. Did you ſee the *Dorſetſhire*, any Part of the Day, bear down to the Aſſiſtance of the *Marlborough?*

A. No:—I did not.

Q. How many *Spaniſh* Ships were there aſtern of the *Spaniſh* Admiral?

A. Four, beſides his Second; I can't ſay there were any more.

Q. How far were thoſe Ships from you?

A. About Five Miles, right to Leeward.

Q. Did you ſee any of thoſe Ships fire at the Fireſhip?

A. Yes; the headmoſt:—But I believe her Shot would not reach.

Aſked by the Priſoner,

Q. Did you never obſerve the *Dorſetſhire* nearer the Enemy, than any other of the Ships aſtern?

A. After the Fireſhip blew up, ſhe was nearer than the *Eſſex* or *Rupert*.

Q. At the neareſt, Do you think ſhe was within Point-blank?

A. I think not.

Q. Do you think the Four *Spaniſh* Ships could have weathered, or fetched the *Dorſetſhire*, had they kept their Wind?

A. I believe they could.

Q. How far do you imagine they paſſed to Leeward of the Three Ships aſtern of the *Dorſetſhire?*

A. I believe within Gun-ſhot of the *Royal Oak?*

Q. Was the *Spaniſh* Admiral's Second damaged in Fight?

A. I can't tell.

Q. Did any Ship engage the *Spaniſh* Admiral's Second aſtern?

A. I can't ſay.

Q. Did you ſee the *Dorſetſhire* engage any Ship?

A. No.

Q. Did you obſerve the *Hercules?*

A. No.

Then he withdrew.

Edward Pike, Maſter's Mate, on board the *Neptune*, called in, and ſworn.

His Depoſition read, as follows; *viz.*

Edward Pike, *late Mate of his Majeſty's Ship the* Neptune, *maketh Oath*;

THAT he was Mate of the ſaid Ship *Neptune*, on the 11th of *February*, 1743; on board which Ship Vice-Admiral *Leſtock* hoiſted his Flag.

That, between Nine and Ten o'Clock in the Forenoon of the ſame Day, Admiral *Mathews* made a Signal for the Line of Battle ahead.

That, between Ten and Eleven o'Clock, or about Eleven, the Admiral made a Signal to engage the Enemy: That Captain *Burriſh* commanded his Majeſty's Ship *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, and Captain *Williams* the *Royal Oak*; which Ships were ſtationed in the Line of Battle, in the Centre Diviſion, and aſtern of the Admiral; and were reſpectively in Sight of the ſaid Signal to engage.

That, about One, or Half an Hour paſt One o'Clock, the Admiral began to engage the *Real*, the *Spaniſh* Admiral's Ship, as did the *Marlborough*.

That the *Marlborough* engaged the *Real*, and her Second aſtern, a conſiderable time alone; and in the ſaid Engagement ſhe had her Main and Mizen Maſts ſhot away, and ſeemed to be diſabled, and in great Diſtreſs.

That the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, were reſpectively to Windward, and aſtern of the *Marlborough*, and in Sight of her Diſtreſs; and they, or any of them, might have gone down to her Aſſiſtance, had the Captains of thoſe Ships thought proper: But none of them did ſo, as this Deponent obſerved; and that neither of the ſaid Ships bore down, and engaged the Enemy in their Stations, in the Line of Battle, as near as the Admiral and *Marlborough* did; but might have done it; and that they kept to Windward of their Stations, and out of point-blank Shot of the Enemy, though they did fire at the Enemy at too great a Diſtance, as this Deponent believes.

That

That the *Anne* Galley Fireſhip bore down upon the *Real*, to burn her, as this Deponent believes; and that ſhe was not covered or conducted by any of his Majeſty's Ships; though the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, or either of them, might have done that Service, had the Captains of thoſe Ships thought proper: And this Deponent did not obſerve, that the ſaid Ships were at that time engaged with any of the Enemies Ships, and believes they were not; and that they were conſiderably to Windward of the *Marlborough*.

Edward Pike.

Sworn before me, this
14th *Sept.* 1745.
Charles Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. What Diſtance was you from the *Dorſetſhire*, when the Admiral began to engage?

A. About Three or Four Miles.

Q. Where was you quartered?

A. Upon the Upper-deck, at the Seventh Gun.

Q. Did you ever ſee the *Dorſetſhire* engage near enough to do Execution?

A. I think not.

Q. How did the *Dorſetſhire* bear from you?

A. To Windward.

Q. Could you have fetch'd her?

A. Yes: If we had haul'd our Wind.

Q. Could the *Spaniſh* Ships aſtern have fetched the *Dorſetſhire*?

A. I believe not.

Q. How many Ships were aſtern of the *Spaniſh* Admiral?

A. Five;— One near the *Real*; the others at a great Diſtance.

Q. How far were the *Spaniſh* Ships to Leeward of you?

A. Four or Five Miles.

Q. Did you ever ſee the *Dorſetſhire* cloſely engaged with the Enemy, during the Battle?

A. Never.

Q. Did you ever obſerve the *Spaniſh* Admiral's Second diſabled?

A. No.

Q. Did ſhe bear away?

A. I can't ſay.

Q. Did you ever obſerve the *Dorſetſhire*, in the whole Action?

A. I obſerved her for Two Hours after the Action began, and ſaw her fire, but not in her Station;— and ſo did the others.

Q. Did you obſerve her bear down to aſſiſt the *Marlborough*, after her Maſts were gone?

A. I never obſerved her to do ſo.

Q. Did you obſerve the Shot of the Four Ships aſtern of the *Marlborough* fall ſhort of the Enemy?

A. Yes: Several.

Q. Did you ſee any of the Enemy's Shot go over the *Dorſetſhire?*

A. I never obſerved any; I ſaw ſeveral Shot go over the *Marlborough*.

Q. In what Poſition was the *Dorſetſhire?*

A. To Windward of the *Marlborough*.

Aſked by the Priſoner,

Q. Did you obſerve any other Ships fire, beſides thoſe Four Ships aſtern of the *Marlborough?*

A. Yes: The *Dunkirk* and *Cambridge* fired.

Q. Did you obſerve, whether they were the *Dorſetſhire*'s Shot, or of any other Ship, that fell ſhort?

A. I did not ſpeak particularly of the *Dorſetſhire*; but, I believe, the Shot of all the Ships aſtern of the *Marlborough* fell ſhort; and that they did not engage near enough to do Execution.

Q. Did you not obſerve any one of the Four Ships to bear down nearer to the Enemy than the others?

A. No:— I think they all kept together.

Then he withdrew.

Lieutenant *James Munro*, late Maſter's Mate, on board the *Neptune*, called in, and ſworn.

His Affidavit read, as follows; *viz.*

James Munro, *late Mate of his Majeſty's Ship the* Neptune, *maketh Oath*;

THAT he was Mate of the ſaid Ship *Neptune* on the 11th of *February*, 1743; on board which Ship Vice-Admiral *Leſtock* hoiſted his Flag.

That, between Ten and Eleven o'Clock, or about Eleven, the Admiral made a Signal to engage the Enemy: That Captain *Burriſh* commanded his Majeſty's Ship *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, and Captain *Williams* the *Royal Oak*; which Ships were ſtationed, in the Line of Battle, in the Centre Diviſion, and aſtern of the Admiral, and were reſpectively in Sight of the ſaid Signal to engage.

That, about One, or Half an Hour paſt One o'Clock, the Admiral began to engage the *Real*, the *Spaniſh* Admiral's Ship; as did the *Marlborough*.

That the *Marlborough* engaged the *Real*, and her Second aſtern, a conſiderable Time, alone; and, in the ſaid Engagement, ſhe had her Main and Mizen Maſts ſhot away; and ſeemed to be diſabled, and in great Diſtreſs.

That the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, were reſpectively to Windward, and aſtern of the *Marlborough*, and in Sight of her Diſtreſs; and they, or any of them, might have gone down to her Aſſiſtance, had the Captains of thoſe Ships thought proper; but none of them did ſo, as this Deponent obſerved: And that neither of the ſaid Ships bore down, and engaged the Enemy in their Stations, in the Line of Battle, as near as the Admiral and *Marlborough* did; but might have done it; and that they kept to Windward of their Stations, out of point-blank Shot of the Enemy; though they did fire at the Enemy; at too great a Diſtance, as this Deponent believes.

That the *Anne-Galley* Fireſhip bore down upon the *Real*, to burn her, as this Deponent believes; and that ſhe was not covered or conducted by any of his Majeſty's Ships; though the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, or either of them, might have done that Service, had the Captains of thoſe Ships thought proper: And this Deponent did not obſerve, that the ſaid Ships were, at that time, engaged with any of the Enemies Ships; and believes they were not; and that they were conſiderably to Windward of the *Marlborough*.

James Munro.

Sworn before me, this 14th Day of *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Did you never ſee the *Dorſetſhire* within Gun-ſhot of the Enemy?

A. No.

Q. Where was you quartered?

A. At the Braces.

Q. How many *Spaniſh* Ships were there aſtern of the *Spaniſh* Admiral?

A. The Admiral's Second, and Four at a Diſtance.

Q. What Diſtance was you from the *Dorſetſhire* when the Engagement began?

A. I believe, between Three and Four Miles.

Then he withdrew.

Charles Stuart, Midſhipman on board the *Neptune*, called in, and ſworn.

His Depoſition was read, as follows; *viz.*

Charles Stuart, *late Midſhipman of his Majeſty's Ship the* Neptune, *maketh Oath*;

THAT, he was Midſhipman on board the ſaid Ship *Neptune* on the 11th of *February*, 1743; on board which Ship Vice-Admiral *Leſtock* hoiſted his Flag.

That, between Nine and Ten o'Clock in the Forenoon of the ſame Day, Admiral *Mathews* made a Signal for the Line of Battle ahead.

That, between Ten and Eleven o'Clock, or about Eleven, the Admiral made a Signal to engage the Enemy: That Captain *Burriſh* commanded his Majeſty's Ship *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, and Captain *Williams* the *Royal Oak*; which Ships were ſtationed in the Line of Battle in the Centre Diviſion, and aſtern of the Admiral, and were reſpectively in Sight of the ſaid Signal to engage.

That, about One, or Half an Hour paſt One o'Clock of that Day, the Admiral began to engage the *Real*, the *Spaniſh* Admiral's Ship; as did the *Marlborough*.

That, the *Marlborough* engaged the *Real* a conſiderable time alone; and in the ſaid Engagement, ſhe had her Main and Mizen Maſts ſhot away; and ſeemed to be diſabled, and in great Diſtreſs.

That, the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, were reſpectively to Windward, and aſtern of the *Marlborough*, and in Sight of her Diſtreſs; and they or any of them might have gone down to her Aſſiſtance, had the Captains of thoſe Ships thought proper, as he believes; but none of them did ſo, as this Deponent obſerved; and that neither of the ſaid Ships bore down, and continued to engage the Enemy in their Stations in the Line of Battle with the *Marlborough*; but might have done it; and that they kept to Windward of the *Marlborough*, and out of point-blank Shot of the Enemy; though they did fire at the Enemy; at too great a Diſtance, as this Deponent believes.

That the *Ann-Galley* Fireſhip bore down upon the *Real*, to burn her, as this Deponent believes; and that ſhe was not covered or conducted by any of his Majeſty's Ships; though the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, or either of them, might have done that Service, had the Captains of thoſe Ships thought proper: And this Deponent did not obſerve, that the ſaid Ships were at that time engaged with any of the Enemy's Ships; and believes they were not: And that they were conſiderably to Windward of the *Marlborough*.

Cha. Stuart.

Sworn this 16th *September*, 1745, before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Braces.

Q. Tell the Court, What you know about the *Dorſetſhire*.

A. All that I know is contained in my Depoſition.

Q. How many Ships were there aſtern of the *Spaniſh* Admiral?

A. Four, beſides his Second.

Q. How far diſtant was you from the *Dorſetſhire*, when the Engagement began?

A. About Five Miles, to the beſt of my Judgment.

Q. Was the *Dorſetſhire* ever within Gun-ſhot?

A. I think not.

Aſked by the Priſoner,

Q. Could you diſtinguiſh, at Five Miles Diſtance, the Difference between point-blank Shot, and others?

A. Yes; I ſaw the Shot fall ſhort.

Q. Did you ſee the Four Ships, the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak* fire?

A. Yes.

Q. Did you ſteer to Leeward or Windward of the Line?

A. To Leeward, ſteering to the Southward.

Q. How was the Wind?

A. About Eaſt.

Then he withdrew.

Andrew Cook, Midſhipman on board the *Neptune*, called in, and ſworn.

His Depoſition was read, as follows; *viz.*

Andrew Cook, *late Midſhipman of his Majeſty's Ship the* Neptune, *maketh Oath*;

THAT, he was Midſhipman on board the ſaid Ship *Neptune* on the 11th of *February*, 1743; on board which Ship Vice-Admiral *Leſtock* hoiſted his Flag.

That, between Nine and Ten o'Clock in the Forenoon of the ſame Day, Admiral *Mathews* made the Signal for the Line of Battle ahead.

That, between Ten and Eleven o'Clock, or about Eleven, the Admiral made a Signal to engage the Enemy: That Captain *Burriſh* commanded his Majeſty's Ship *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, and Captain *Williams* the *Royal Oak*; which Ships were ſtationed in the Line of Battle in the Centre Diviſion, and aſtern of the Admiral; and were reſpectively in Sight of the ſaid Signal to engage.

That, about One, or Half an Hour paſt One o'Clock, the Admiral began to engage the *Real*, the *Spaniſh* Admiral's Ship; as did the *Marlborough*.

That, the *Marlborough* engaged the *Real*, and her Second aſtern, a conſiderable time alone; and in the ſaid Engagement ſhe had her Main and Mizen Maſts ſhot away; and ſeemed to be diſabled, and in great Diſtreſs.

That the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, were reſpectively to Windward, and aſtern of the *Marlborough*, and in Sight of her Diſtreſs; and they, or any of them, might have gone down to her Aſſiſtance, had the Captains of thoſe Ships thought proper; but none of them did ſo, as this Deponent obſerved: And that neither of the ſaid Ships bore down and engaged the Enemy in their Stations in the Line of Battle, as near as the Admiral and *Marlborough* did; but might have done it; and that they kept to Windward of their Stations, and out of point-blank Shot of the Enemy; though they did fire at the Enemy; at too great a Diſtance, as this Deponent believes.

That the *Anne-Galley* Fireſhip bore down upon the *Real*, to burn her, as this Deponent believes; and that ſhe was not covered or conducted by any of his Majeſty's Ships; though the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, or either of them, might have done that Service, had the Captains of thoſe Ships thought proper: And this Deponent did not obſerve, that the ſaid Ships were at that time engaged with any of the Enemy's Ships, and believes they were not; and that they were conſiderably to Windward of the *Marlborough*.

Andrew Cook.

Sworn before me, this
17th *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. What Diſtance was you from the *Dorſetſhire*, when the Engagement began?

A. About Four or Five Miles.

Q. Did you ſee the *Dorſetſhire* within Point-blank of the Enemy?

A. No.

Q. Where was you quartered?

A. Upon the Upper-deck, at the Fifth Gun.

Q. How many Ships were there aſtern of the *Spaniſh* Admiral?

A. Five in all.

Q. Did the *Dorſetſhire* engage, at no time of the Day, within Point-blank?

A. Not that I obſerved.

Q. Did you ſee the *Dorſetſhire* engage after the Admiral wore?

A. She, and ſome of the reſt, fired ſome Shot in paſſing the *Spaniſh* Ships.

Aſked by the Priſoner,

Q. Did thoſe Ships of ours to Windward, keep in a Line with one another?

A. No.

Q. Which were the Weathermoſt of them?

A. The *Eſſex* and *Rupert*.

Q. Did you not ſee the *Dorſetſhire* engage by herſelf?

A. I ſaw Firing; but I could not diſtinguiſh from what Ships.

Q. Was ſhe within point-blank Shot?

A. I don't think ſhe was.

Q. Was ſhe within Gun-ſhot?

A. I believe within random Gun-ſhot.

Then he withdrew.

Lieutenant *Edward Clark*, late Midſhipman on board the *Neptune*, called in, and ſworn.

His Depoſition was read, as follows; *viz.*

Edward Clark, *late Midſhipman of his Majeſty's Ship the* Neptune, *maketh Oath*,

THAT he was Midſhipman on board the ſaid Ship *Neptune* on the 11th of *February*, 1743; on board which Ship Vice-Admiral *Leſtock* hoiſted his Flag.

That, between Nine and Ten o'Clock in the Forenoon of the ſame Day, Admiral *Mathews* made a Signal for the Line of Battle ahead.

That, between Ten and Eleven o'Clock, or about Eleven, the Admiral made a Signal to engage the Enemy: That Captain *Burriſh* commanded his Majeſty's Ship *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, and Captain *Williams* the *Royal Oak*; which Ships were ſtationed in the Line of Battle, in the Centre Diviſion, and aſtern of the Admiral, and were reſpectively in Sight of the ſaid Signal to engage.

That, about One, or Half an Hour paſt One o'Clock, the Admiral began to engage the *Real*, the *Spaniſh* Admiral's Ship; as did the *Marlborough*.

That the *Marlborough* engaged the *Real* and her Second aſtern a conſiderable time alone; and in the ſaid Engagement ſhe had her Main and

and Mizen Maſts ſhot away; and ſeemed to be diſabled, and in great Diſtreſs.

That the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, were reſpectively to Windward, and aſtern of the *Marlborough*, and in Sight of her Diſtreſs; and they, or any of them, might have gone down to her Aſſiſtance, had the Captains of thoſe Ships been ordered, and thought proper; but none of them did ſo, as this Deponent obſerved: And that neither of the ſaid Ships bore down and engaged the Enemy in their Stations in a Line of Battle as near as the Admiral and *Marlborough* did; but might have done it; and that they kept to Windward of their Stations, and out of point-blank Shot of the Enemy; though they did fire at the Enemy; at too great a Diſtance, as this Deponent believes.

That the *Anne-Galley* Fireſhip bore down upon the *Real*, to burn her, as this Deponent believes; and that ſhe was not covered or conducted by any of his Majeſty's Ships; though the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, or either of them, might have done that Service, had the Captains of thoſe Ships been ordered, and thought proper: And this Deponent did not obſerve that the ſaid Ships were at that Time engaged with any of the Enemies Ships; and that they were conſiderably to Windward of the *Marlborough*.

Edw. Clark.

Sworn before me, this 17th *Sept.* 1745,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Did you ever ſee the *Dorſetſhire* bear down near enough to do Execution?

A. No.

Q. Where was you quartered?

A. Upon the Quarter-deck, to paſs the Word.

Q. What Diſtance was you from the *Dorſetſhire* at the Beginning of the Engagement?

A. About Five or Six Miles.

Q. Whaat Ships did you ſee engage?

A. In the Afternoon, when the Admiral wore, I ſaw Ships engaged; and I believe the *Dorſetſhire* was one.

Q. How many Ships were there aſtern of the *Spaniſh* Admiral?

A. I believe Six: One cloſe to the *Spaniſh* Admiral, the other Five about Six Miles diſtant.—I am not certain whether there were Four or Five coming up.

Aſked by the Priſoner,

Q. Were our Four Ships aſtern of the *Marlborough* to Windward, or to Leeward of you?

A. To Windward all the Afternoon.

Q. Were they to Windward or Leeward of you at the Beginning of the Engagement?

A. Rather to Windward.

Q. Was you ever to Leeward of Admiral *Mathews*'s Diviſion?

A. Yes, we brought them before our Beam.

Q. How did you ſteer then?

A. For the *Marlborough*, or rather to Leeward.

Q. Did you ever bring your Head to point with the *Namur*?

A. Yes, when ſhe began to engage.

Q. Then how did the Four Ships aſtern of the *Marlborough* appear?

A. To Windward of our Foreſail.

Q. Did the Ships in Admiral *Mathews*'s Diviſion keep in a Line? Or were ſome to Windward, and others to Leeward? Or how did they appear?

A. The *Eſſex* and *Rupert* ſeemed to be to Windward of the *Dorſetſhire*.

Q. How near might the *Dorſetſhire* be to the *Hercules*, when the *Marlborough* and *Namur* engaged the *Real*?

A. I can't ſay how far.—No Ships were near ſo far down as they were.

Q. Did you obſerve any Ship engage the *Hercules*?

A. I ſaw Firing from ſeveral Ships—but I ſaw the Shot from both Sides fall ſhort.

Q. How many Ships fired at the *Hercules*?

A. I cannot ſay.

Q. Did you obſerve the Ships between you and the *Marlborough* fire at any of the Five *Spaniſh* Ships coming up?

A. Yes.

Q. Did the *Dunkirk* fire at the Beginning of the Engagement?

A. No—but ſhe did at the latter Part.

Q. Did the *Royal Oak*?

A. Not that I obſerved.

Q. Did the *Rupert*?

A. I can't ſay they fired at the Beginning of the Engagement; but ſeveral of them fired towards the latter End of the Engagement.

Then he withdrew.

Stephen Jenkins, late Midſhipman on Board the *Neptune*, called in, and ſworn.

His Depoſition read, as follows; *viz.*

Stephen Jenkins, *late Midſhipman of his Majeſty's Ship the* Neptune, *maketh Oath*;

THAT he was Midſhipman on board the ſaid Ship *Neptune*, on the Eleventh of *February*, 1743; on board which Ship Vice-Admiral *Leſtock* hoiſted his Flag.

That between Nine and Ten o'Clock in the Forenoon of the ſame Day, Admiral *Mathews* made a Signal for the Line of Battle ahead.

That between Ten and Eleven o'Clock, or about Eleven, the Admiral made a Signal to engage the Enemy: That Captain *Burriſh* commanded his Majeſty's Ship *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, and Captain *Williams* the *Royal Oak*; which Ships were ſtationed in the Line of Battle in the Centre Diviſion, and aſtern of the Admiral; and were reſpectively in Sight of the Signal to engage.

That about One, or Half an Hour paſt One o'Clock, the Admiral began to engage the *Real*, the *Spaniſh* Admiral's Ship, as did the *Marlborough*.

That

That the *Marlborough* engaged the *Real* a conſiderable time alone; and in the ſaid Engagement ſhe had her Main and Mizen Maſts ſhot away; and ſeemed to be diſabled, and in great Diſtreſs.

That the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, were reſpectively to Windward and aſtern of the *Marlborough*, and in Sight of her Diſtreſs; and they, or any of them, might have gone down to her Aſſiſtance, had the Captains of thoſe Ships thought proper; but none of them did ſo, as this Deponent obſerved: And that neither of the ſaid Ships bore down and engaged the Enemy, in their Stations, in the Line of Battle, as near as the Admiral and *Marlborough* did; but might have done it: And that they kept to Windward of their Stations, and out of point-blank Shot of the Enemy, tho' they did fire at the Enemy; at too great a Diſtance, as this Deponent believes.

That the *Anne Galley* Fireſhip bore down upon the *Real*, to burn her, as this Deponent believes; and that ſhe was not covered or conducted by any of his Majeſty's Ships; tho' the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, or either of them, might have done that Service, had the Captains of thoſe Ships thought proper. And this Deponent did not obſerve, that the ſaid Ships were, at that time, engaged with any of the Enemy's Ships; and believes they were not; and that they were to Windward of the *Marlborough*.

Stephen Jenkins.

Sworn this 14th *September*, 1745. before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Did you never ſee the *Dorſetſhire* engage within Gun-ſhot?

A. No; I cannot ſay I did.

Q. Did you not ſee her engage in the Evening, when the Admiral wore?

A. I can't ſay.

Q. Where was you quartered?

A. At the Braces.

Q. Did you ever ſee the *Dorſetſhire* fire at the Enemy?

A. I can't ſay that I ſaw that Ship in particular.

Q. Did you ſee the *Marlborough* engage;

A. Yes, and the Ships aſtern of her.

Q. Were the Ships aſtern of her as cloſely engaged as ſhe was?

A. No.

Q. Did you ſee the *Hercules*?

A. Yes.

Q. What Ship engaged her?

A. I can't ſay.

Q. What Diſtance was you from the *Dorſetſhire*?

A. I can't tell.

Q. What Number of *Spaniſh* Ships were there aſtern of the *Spaniſh* Admiral?

A. I believe, Five, including his Second.

Q. How many paſſed by you?

A. I think Four; but I am not ſure of the Number.

Asked by the Priſoner,

Q. What Diſtance was you from the *Dorſetſhire*, when the Admiral began to engage?

A. I can't ſay.

Q. Did you ſee the Ships aſtern of the *Marlborough* fire?

A. I ſaw ſeveral fire: I can't ſay which in particular; but their Shot fell in the Water.

Then he withdrew.

John Burges, Midſhipman on board the *Neptune*, called in, and ſworn.

His Affidavit read, as follows; *viz.*

John Burges, *late Midſhipman of his Majeſty's Ship the* Neptune, *maketh Oath*;

THAT he was a Midſhipman on board the ſaid Ship on the 11th of *February*, 1743. on board which Ship Vice-Admiral *Leſtock* hoiſted his Flag.

That, between Nine and Ten o'Clock in the Forenoon of the ſame Day, Admiral *Mathews* made a Signal for the Line of Battle ahead.

That, between Ten and Eleven o'Clock, the Admiral made a Signal to engage the Enemy: That Captain *Burriſh* commanded his Majeſty's Ship *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, and Captain *Williams* the *Royal Oak*; which Ships were ſtationed in the Line of Battle in the Centre Diviſion, and aſtern of the Admiral; and were reſpectively in Sight of the the ſaid Signal to engage.

That, about One, or Half an Hour paſt One o'Clock of that Day, the Admiral began to engage the *Real*, the *Spaniſh* Admiral's Ship, as did the *Marlborough*.

That the *Marlborough* engaged the *Real* and her Second aſtern a conſiderable time alone; and in the ſaid Engagement ſhe had her Main and Mizen Maſts ſhot away; and ſeemed to be diſabled, and in great Diſtreſs.

That the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, were reſpectively to Windward and aſtern of the *Marlborough*, and in Sight of her Diſtreſs; and they, or any of them, might have gone down to her Aſſiſtance, had the Captains of thoſe Ships thought proper; but none of them did ſo, as this Deponent obſerved; and that neither of the ſaid Ships bore down and engaged the Enemy in their Stations in the Line of Battle, as near as the Admiral and *Marlborough* did; but might have done it; and that they kept to Windward of their Stations, and out of point-blank Shot of the Enemy; tho' they did fire at the Enemy; at too great a Diſtance, as this Deponent believes.

That the *Anne Galley* Fireſhip bore down upon the *Real*, to burn her, as this Deponent believes; and that ſhe was not covered or conducted by any of his Majeſty's Ships; though the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, or either of them, might have done that Ser-

vice, had the Captains of thoſe Ships thought proper: And this Deponent did not obſerve, that the ſaid Ships were at that time engaged with any of the Enemy's Ships, and believes they were not; and that they were conſiderably to Windward of the *Marlborough*.

John Burges.

Sworn before me, this 14th
Day of *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. What Diſtance was you from the *Dorſetſhire*, when the Admiral began to engage?

A. Between Five and Six Miles.

Q. Did the *Dorſetſhire* ever engage?

A. I ſaw her fire; but at too great a Diſtance, not within point-blank Shot—Her Shot fell ſhort, and ſo did the Enemy's.

Q. Where was you quartered?

A. On the Main-top.

Q. Did you ſee the *Marlborough*'s Maſts fall?

A. Yes.

Q. If you was in the Main-top, How could you ſee the *Marlborough*'s Maſts fall?

A. I went up upon the Main-top-gallant Yard to ſee the Engagement, and I ſaw them fall from thence.

Q. When did you leave that Station?

A. I was ordered down upon the Main-deck, and went thither ſoon after.

Q. Did you obſerve the *Dorſetſhire* to bear down after the Engagement began?

A. No, never within Point-blank.

Q. Did ſhe bear down after the *Marlborough* loſt her Maſts?

A. No.

Q. Did you expect, that the Ships to Windward of her would have gone to her Aſſiſtance?

A. I could expect no otherwiſe.

Q. In what Poſition was the *Dorſetſhire*?

A. She was to Leeward of the *Eſſex* and *Rupert*; and ſo was the *Royal Oak*.

Q. Was the *Dorſetſhire* to Leeward of the *Marlborough*, when the Fireſhip blew up?

A. No, to Windward.—I ſaw the Fireſhip blow up at paſt Four o'Clock, from the Larboard-ſide of the Forecaſtle.

Q. How many *Spaniſh* Ships were there aſtern of the *Real*?

A. I believe, Six.

Aſked by the Priſoner,

Q. Did you obſerve any of the *Engliſh* Ships, between you and the *Marlborough*, fire at the *Spaniards*?

A. Yes,—I think the *Dorſetſhire* fired.

Q. What Ship do you think the *Dorſetſhire* fired at?

A. It might be the *Spaniſh* Admiral's Second aſtern.

Q. What *Spaniſh* Ships did the other Ships fire at?

A. I can't tell,—not being able to diſtinguiſh, how their Guns were directed.

Q. What Ships do you think the *Dunkirk* and *Cambridge* fired at?

A. At the *Spaniſh* Ships coming up.

Q. Were the *Spaniſh* Ships that were coming up, in a Line with their Admiral?

A. No; they were to Leeward of him.

Q. Was the *Dorſetſhire* nearer to the *Hercules*, than the *Dunkirk* was to the Ship ſhe fired at?

A. I can't ſay.

Q. Was the *Dunkirk* to Windward or to Leeward of the *Dorſetſhire*, at the Beginning of the Engagement?

A. I can't ſay:—She was to Windward of the *Dorſetſhire*, about Four o'Clock.

Q. Was the *Neptune* to Windward of the *Dorſetſhire*?

A. No, to Leeward.—I ſaw her from our Larboard-ſide, upon our Weather-Bow.

Q. How was the Wind then?

A. Abaft our Beam.

Q. But if you had brought to, would you then have been to Windward or to Leeward of the *Dorſetſhire*?

A. We ſhould then have been to Windward.

Q. Did you ſee the *Spaniſh* Admiral's Second diſabled by Loſs of Maſts?

A. No.

Q. Did ſhe bear out of the Line?

A. I can't ſay;—but I think ſhe ſhot under the *Real*'s Quarter.

Q. What was the Cauſe of it?

A. I cannot ſay.

Q. Was ſhe drove under the *Real*'s Lee-Quarter by the *Dorſetſhire*?

A. I think not, becauſe I think the *Dorſetſhire* was at too great a Diſtance from her.

Q. Could the Four or Five Sail of *Spaniſh* Ships, coming up, have weathered the *Dorſetſhire*?

A. I think not.

Q. How far did thoſe *Spaniſh* Ships paſs to Leeward of you, as they came up?

A. About the ſame Diſtance that we were from the Admiral.

Q. If they had hauled their Wind, at the Diſtance they were, could they have fetched the *Dorſetſhire*?

A. I think not.

Q. Could you diſtinguiſh the Difference between point-blank and random Shot, at the Diſtance you was?

A. I ſaw the Shot fall into the Water.

Q. Could you diſtinguiſh, whether the Shot fired from the *Dorſetſhire* at the Enemy, and from the Enemy at the *Dorſetſhire*, fell ſhort? Or were they fired between other Ships and the Enemy?

A. The *Dorſetſhire* appeared to me to begin to engage, before any of the other Ships aſtern of her; and there ſeemed to be no other Ship for her to fire at, but the *Hercules*; and I obſerved the Shot, in croſſing each other,

to fall ſhort; and therefore it muſt have been between the *Dorſetſhire* and *Hercules*.

Q. Did you ſee any Shot go over the Ships, to Windward of the *Dorſetſhire*?

A. Yes, I ſaw Shot go both over the *Dorſetſhire*, and over the *Eſſex* and *Rupert*, which were to Windward of the *Dorſetſhire*.

Q. How far was you from the *Marlborough* when her Maſts were loſt?

A. About Four Miles.

Q. Where was you then?

A. Upon the Main-top-gallant-Yard.

Q. What Wind had you then?

A. Very little; it declined after the Engagement began, and there was a great Swell:—We went ſcarce a Knot an Hour during the Engagement:— The Helm lay ſometimes aport, and ſometimes aſtarboard, and the Sails flapp'd to the Maſts.

Then he withdrew.

Lieutenant *James Orrok*, late Midſhipman on board the *Neptune*, called in, and ſworn.

His Depoſition was read, as follows; *viz.*

James Orrok, *late Midſhipman of his Majeſty's Ship the* Neptune, *maketh Oath*;

THAT he was Midſhipman on board the ſaid Ship *Neptune*, on the 11th of *February*, 1743; on board which Ship Vice-Admiral *Leſtock* hoiſted his Flag.

That, between Ten and Eleven o'Clock, or about Eleven, the Admiral made a Signal to engage the Enemy: That Captain *Burriſh* commanded his Majeſty's Ship *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, and Captain *Williams* the *Royal Oak*; which Ships were ſtationed in the Line of Battle, in the Centre Diviſion, and aſtern of the Admiral, and were reſpectively in Sight of the ſaid Signal to engage.

That about One or Half an Hour paſt One o'Clock, the Admiral began to engage the *Real*, the *Spaniſh* Admiral's Ship; as did the *Marlborough*.

That the *Marlborough* engaged the *Real*, and her Second aſtern, a conſiderable time alone; and in the ſaid Engagement ſhe had her Main and Mizen Maſts ſhot away; and ſeemed to be diſabled, and in great Diſtreſs.

That the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, were reſpectively to Windward and aſtern of the *Marlborough*, and in Sight of her Diſtreſs; and they, or any of them, might have gone down to her Aſſiſtance, had the Captains of thoſe Ships thought proper; but none of them did ſo, as this Deponent obſerved; and that neither of the ſaid Ships bore down, and engaged the Enemy in their Stations, in the Line of Battle, as near as the Admiral and *Marlborough* did; but might have done it: And that they kept to Windward of their Stations, and out of point-blank Shot of the Enemy; though they did fire at the Enemy; at too great a Diſtance, as this Deponent believes.

That the *Anne Galley* Fireſhip bore down upon the *Real*, to burn her, as this Deponent believes; and that ſhe was not covered or conducted by any of his Majeſty's Ships; though the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, or either of them, might have done that Service, had the Captains of thoſe Ships thought proper: And this Deponent did not obſerve, that the ſaid Ships were at that time engaged with any of the Enemies Ships; and believes they were not; and that they were conſiderably to Windward of the *Marlborough*.

Ja. Orrok.

Sworn before me, this 14th *Sept.* 1745.

Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. What time did you ſee the *Dorſetſhire*, after the Admiral began to engage?

A. I can't tell.

Q. Did you ever ſee her fire?

A. I ſaw the Four Ships aſtern of the *Marlborough* fire; but I can't be particular as to any One.

Q. Where was you quartered?

A. On the Quarter-deck.

Q. Do you think thoſe Four Ships were within Gun-ſhot?

A. I ſaw their Shot fall ſhort.

Q. Did you ſee any particular Ship engaged with the *Hercules*?

A. I can't ſay:—I ſaw all our Four Ships aſtern of the *Marlborough* fire.

Q. At what time?

A. Between Two and Three o'Clock.

Q. What Diſtance was you from the *Dorſetſhire*?

A. About Five Miles.

Q. How many *Spaniſh* Ships were there aſtern of the *Spaniſh* Admiral?

A. I believe Six:— Two cloſed with the *Real*, and Four at a Diſtance.

Q. Did the *Spaniſh* Ships aſtern cloſe with their Admiral, by the time the Fireſhip blew up?

A. No, I think they did not.

Q. Did any of them fire at the Fireſhip?

A. Yes; the headmoſt of them did.

Q. When the *Marlborough*'s Maſts were gone, did you ſee any of our Four Ships aſtern bear down to ſuccour her?

A. No.

Q. Did you ſee the *Marlborough*'s Maſts go away?

A. Yes.

Q. Did you ſee the *Dorſetſhire* bear down at firſt, or at any time after?

A. No.

Asked by the Priſoner,

Q. Were any of the Vice-Admiral's Diviſion in a Line with the Admiral?

A. When

A. When the *Namur* and *Marlborough* firſt bore down, they were right ahead.

Q. In what Poſition did the Fleet go down, at the Firſt of the Engagement?

A. In a Line abreaſt.

Q. At what Time?

A. In the Morning.

Q. Did they alter that Line?

A. Yes; into a Line ahead.

Q. Did they go down in that Poſition to engage?

A. They kept ſtretching to the Southward, in a Line ahead, till the Admiral bore away for the Enemy.

Q. Was any Alteration made in that Line, before the Engagement began?

A. Yes: The Admiral bore ſhort down upon the Enemy, in a Line abreaſt.

Q. Was there any Signal then made for that Line?

A. No.

Q. How came they to alter their Poſition?

A. I can't ſay.

Q. Do you think the *Dorſetſhire* fired at the Four *Spaniſh* Ships aſtern?

A. I can't ſay:—I ſaw our Four Ships fire, but at too great a Diſtance.

Q. How far was you from the *Dorſetſhire?*

A. About Four or Five Miles.

Q. Was you to Windward or to Leeward of our Four Ships aſtern?

A. To Windward.

Q. Could you diſtinguiſh thoſe Four Ships that you ſay did not do their Duty, to be in a Line?

A. Yes; they appeared to be in a Line with each other.

Q. Did they appear to Windward of the *Marlborough* and Admiral?

A. Yes; they were to Windward of both.

Q. Did you not particularly ſee the *Dorſetſhire* bear down, during any Part of the Action?

A. No.

Q. Did you ever ſee the *Dorſetſhire* engage?

A. I ſaw ſome of the Four fire; but I can't tell which.

Then he withdrew.

Lieutenant *Wells*, of the *Torbay*, called in, and ſworn.

His Depoſition was read, as follows; *viz.*

Lieutenant Benjamin Wells, *late of his Majeſty's Ship the* Torbay, *maketh Oath*;

THAT he was Lieutenant on board the ſaid Ship, during the Month of *February*, 1743; which Ship was ſtationed, on the Eleventh of ſaid *February*, in the Line of Battle, in his Majeſty's Fleet in the *Mediterranean*, under the Command of Admiral *Mathews*, the firſt Ship ahead of Vice-Admiral *Leſtock*, and in his Diviſion of the ſaid Fleet.

That, about Half an Hour paſt Ten, a Signal was made to engage the Enemy.

That, about One o'Clock of that Day, the *Namur* and *Marlborough* bore down, and engaged the *Real*, the *Spaniſh* Admiral's Ship, and his Second aſtern.

That Captain *Burriſh* in the *Dorſetſhire*, Captain *Ambroſe* in the *Rupert*, and Captain *Williams* in the *Royal Oak*, were in Sight of the Signal to engage, and of the Engagement.

That, about Half an Hour paſt Three, the *Marlborough*'s Maſts were ſhot away; and that the *Dorſetſhire*, *Eſſex*, and *Rupert*, and *Royal Oak*, might have gone to her Aſſiſtance, being to Windward of the *Marlborough*; but neither of them did.

Benjamin Wells.

Sworn before me, this 11th Day of *September*, 1745.

Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Did you never ſee the *Dorſetſhire* engage?

A. I don't remember that I did.

Q. Did you ſee the *Marlborough*, when ſhe loſt her Maſts?

A. I did.

Q. Did you ſee any Ship bear down to aſſiſt her?

A. I don't remember that I did.

Q. Where was you quartered?

A. On the Middle Gun-deck.

Q. How many Ships were aſtern of the *Spaniſh* Admiral?

A. Five in all.

Q. Did you ever ſee the *Dorſetſhire* cloſely engaged with the *Hercules?*

A. No.

Q. Did you ſee the *Dorſetſhire* before the *Marlborough*'s Maſts were gone?

A. No; I did not ſee her till the Fireſhip bore down; and then, ſeeing her go by herſelf, I looked to Windward, to ſee if any Ships were following her; and then I ſaw the Four Ships, which I ſince found to be the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*; but none of them bore down to cover her.

Q. What Diſtance was the *Torbay* from the *Dorſetſhire?*

A. About Four or Five Miles.

Q. How many Knots did you run, during the Engagement?

A. I believe, about Two or Three.

Q. Did you ſee the Four *Spaniſh* Ships fire at the Fireſhip?

A. I believe they did—I ſaw them all fire.

Aſked by the Priſoner,

Q. At what time did you ſee the *Dorſetſhire?*

A. I can't ſay.

Q. Did you ever ſee the *Dorſetſhire?*

A. I could not diſtinguiſh the *Dorſetſhire* from the others.

Q. Did

Q. Did you ſee the *Dorſetſhire* engage the *Hercules*?

A. I don't remember her in particular; I think the *Hercules* muſt have been engaged with the *Marlborough*, becauſe I thought the other Four Ships aſtern were at too great a Diſtance.

Then he withdrew.

Lieutenant *Bucknall*, of the *Torbay*, called in, and ſworn.

His Depoſition was read, as follows; *viz.*

Lieutenant Joſeph Bucknall, *late of his Majeſty's Ship the* Torbay, *maketh Oath*;

THAT he was Lieutenant on board the ſaid Ship during the Month of *February*, 1743. which Ship was ſtationed on the 11th of ſaid *February*, in the Line of Battle, in his Majeſty's Fleet in the *Mediterranean*, under the Command of Admiral *Mathews*, the Firſt Ship ahead of Vice-Admiral *Leſtock*, and in his Diviſion of the ſaid Fleet.

That, about Half an Hour paſt Nine o'Clock in the Morning of the Eleventh of ſaid *February*, a Signal was made for a Line ahead; and about Half an Hour paſt Ten, a Signal was made to engage the Enemy.

That, about Half an Hour paſt One o'Clock of that Day, the *Namur* and *Marlborough* bore down, and engaged the *Real*, the *Spaniſh* Admiral's Ship, and his Second aſtern.

That Captain *Burriſh* in the *Dorſetſhire*, Captain *Ambroſe* in the *Rupert*, and Captain *Williams* in the *Royal Oak*, were in Sight of the Signal to engage, and of the Engagement.

That, about Half an Hour paſt Three, the *Marlborough*'s Maſts were ſhot away; and that the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, might have gone down to her Aſſiſtance, being to Windward of the Line, and their Stations; but neither of them did.

That he ſaw the *Anne Galley* Fireſhip go down towards the *Real*, between Four and Five o'Clock; and that ſhe was not covered or conducted by any Ship of his Majeſty's Fleet: That the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, might have gone down, and covered her; but neither of them did: And that they were reſpectively to Windward of their Stations, and none of them engaged with the Enemy at that Time.

Joſeph Bucknall.

Sworn before me, this 11th
Day of *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. What Diſtance was you from the *Dorſetſhire*, when the Engagement began?

A. About Four or Five Miles.

Q. Did you never ſee the *Dorſetſhire* bear down?

A. I don't remember to have ſeen her bear down.

Q. Do you remember to have ſeen her engage the Enemy?

A. I don't remember her in particular—I ſaw ſeveral Ships, aſtern of the *Marlborough*, firing.

Q. Where was you quartered?

A. Upon the Middle-Gun-deck.

Q. How many Ships were there aſtern of the *Spaniſh* Admiral?

A. I think Five, in all.

Asked by the Priſoner,

Q. Where was the *Torbay* at the Beginning of the Action?

A. Aſtern of Vice-Admiral *Leſtock*.

Q. Was ſhe ſtationed there?

A. No; ſhe was ſtationed his Second ahead, but ſhe dropt aſtern, not being able to keep up in her Station.

Q. Did you ſee the *Dorſetſhire* ever engaged in cloſe Action with the Enemy?

A. No.

Q. Did you ever ſee her engaged at all?

A. I can't ſay, that I ſaw the *Dorſetſhire* in particular; but I ſaw ſeveral of the Ships aſtern of the *Marlborough*, firing, but at too great a Diſtance.

Q. What Ships did you ſee bear down, when the Admiral and *Marlborough* did?

A. I ſaw none, but the Admiral and *Marlborough*, bear down.

Then he withdrew.

Lieutenant *Vaughan*, of the *Torbay*, called in, and ſworn.

His Depoſition was read, as follows;

Lieutenant Arthur Vaughan, *late of his Majeſty's Ship the* Torbay, *maketh Oath*;

THAT he was Lieutenant on board the ſaid Ship, during the Month of *February*, 1743; which Ship was ſtationed on the Eleventh of ſaid Month of *February*, in the Line of Battle, in his Majeſty's Fleet in the *Mediterranean*, under the Command of Admiral *Mathews*, the firſt Ship ahead of Vice-Admiral *Leſtock*, and his Diviſion of the ſaid Fleet.

That, about Half an Hour paſt Nine o'Clock in the Morning of the Eleventh of ſaid *February*, a Signal was made for a Line ahead; and, about Half an Hour paſt Ten, a Signal was made to engage the Enemy.

That, about Half an Hour paſt One o'Clock of that Day, the *Namur* and *Marlborough* bore down, and engaged the *Real*, the *Spaniſh* Admiral's Ship, and his Second aſtern.

That Captain *Burriſh* in the *Dorſetſhire*, Captain *Ambroſe* in the *Rupert*, and Captain *Williams* in the *Royal Oak*, were in Sight of the Signal to engage, and of the Engagement.

That, about Half an Hour paſt Three, the *Marlborough*'s Maſts were ſhot away; and that the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, might have gone to her Aſſiſtance; but neither of them did.

That he ſaw the *Anne Galley* Fireſhip go down towards the *Real*, between Four and Five o'Clock; and that ſhe was not covered or conducted by any Ship of his Majeſty's Fleet: That the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, might have gone down, and covered her; but neither of them did; and none of them engaged with the Enemy at that Time.

Arthur Vaughan.

Sworn before me, this 12th Day of *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?
A. Upon the Lower-Gun-deck.
Q. What Diſtance was you from the *Dorſetſhire*, when the Admiral began to engage?
A. I can't tell.
Q. Did you ſee her?
A. Yes.
Q. How far do you imagine you might be from her?
A. I can't tell.
Q. Was you chiefly at your Quarters?
A. I was ſometimes at the Entering Port, on the Middle-Gun-deck.
Q. How far was you from Admiral *Mathews*?
A. About Six Miles.
Q. Why can't you remember your Diſtance from the *Dorſetſhire*, as well as from the Admiral?
A. I minded the Admiral, but not the *Dorſetſhire*.
Q. Did you ever ſee the *Dorſetſhire* engaged?
A. Never, that I know of.
Q. Did you obſerve the *Dorſetſhire* to fire at the Enemy, during the Action?
A. No.
Q. Did you ſee the Fireſhip blow up?
A. Yes.
Q. Were any of the *Spaniſh* Ships aſtern firing at the Fireſhip, when ſhe blew up?
A. I can't tell—The *Real* fired at her.
Q. How many *Spaniſh* Ships were there aſtern of the *Spaniſh* Admiral?
A. Five, in all.

Asked by the Priſoner,

Q. Did you ſee the *Marlborough* after ſhe loſt her Maſts?
A. Yes.
Q. Did you ſee her engage afterwards?
A. Yes; I ſaw her Maſts over her Side, and that ſhe fired afterwards at the *Real*.
Q. Did you ſee any of our Ships near her?
A. No.
Q. How do you know ſhe was in Diſtreſs?
A. I ſaw her Maſts down.

Then he withdrew.

The Court adjourned till Monday *Morning next, at Eight o'Clock.*

The Fourth Day's TRYAL *of Captain* GEORGE BURRISH,

On Board His MAJESTY'S *Ship the* London, *at* Chatham,

MONDAY, the 30th of *September*, 1745.

THE Court met, according to Adjournment; Captain *Rodney* and Captain *Swanton* not being preſent, being gone to their Duty on board their Ships, which were ready to proceed to Sea.

The Priſoner was brought in by the Marſhal; and the Witneſſes ordered to be called in.

Captain *Gaſcoigne*, of the *Torbay*, called in, and ſworn.

His Depoſition was read, as follows; *viz.*

Captain John Gaſcoigne, *late Commander of his Majeſty's Ship the* Torbay, *maketh Oath*;

THAT he was Captain of the ſaid Ship, during the Month of *February*, 1743; which Ship was ſtationed, on the 11th of the ſaid Month of *February*, in the Line of Battle, in his Majeſty's Fleet in the *Mediterranean*, under the Command of Admiral *Mathews*, and the next Ship ahead of Vice-Admiral *Leſtock*.

That, about half an Hour paſt Nine o'Clock, the Signal was made for a Line ahead; and, about Half an Hour paſt Ten, a Signal was made to engage the Enemy.

That, about Half an Hour paſt One o'Clock, the *Namur* and *Marlborough* bore down, and engaged the *Real* (the *Spaniſh* Admiral's Ship), and his Second aſtern.

That Captain *Burriſh*, in the *Dorſetſhire*; Captain *Norris*, in the *Eſſex*; Captain *Ambroſe*, in the *Rupert*; and Captain *Williams*, in the *Royal Oak*; were (by their Situation) in Sight of the ſaid Signal, and of the Engagement.

That, about Three o'Clock, the *Marlborough*'s Main and Mizen Maſts were ſhot away; and that the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, might have gone to her Aſſiſtance, being to Windward of the Line, and of their Stations; but neither of them did.

That he ſaw the *Anne Galley* Fireſhip go down toward the *Real*, between Four and Five o'Clock; and that ſhe was not covered or conducted by any Ship of his Majeſty's Fleet; and that the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, might have gone down and covered her,

her, if they had been ordered ſo to do; but neither of them did; and that they were reſpectively to Windward of her.

J. Gaſcoigne.

Sworn this 30th *Sept.* 1745. before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Did you ſee the Admiral, when he firſt began to engage?

A. Yes.

Q. Did you ſee the *Dorſetſhire* then?

A. No.

Q. What Diſtance was you then from the Admiral?

A. About Two Leagues.

Q. In how long time, after you ſaw the Admiral begin to engage, did you ſee the *Dorſetſhire*?

A. I don't know that I ever ſaw her, in particular, after the Admiral bore down to engage, my Spritſail and Foreſail being ſet, which intercepted my View of what was ahead; for I was then dropped aſtern out of my Station, and my Attention was almoſt wholly employed in endeavouring to regain it; which I was not able to do, though I crowded all the Sail I could for that Purpoſe; and afterwards I could only obſerve what paſſed in the Space, which was between the Lee-Leech of my Foreſail and Spritſail, and the Vice-Admiral's Ship: I ſaw the Admiral and *Marlborough*, in their Bearing down upon the *Real*, when they opened to Leeward of my Foreſail, and I ſaw them haul up to engage; but I did not ſee any other of our Ships open to Leeward of my Foreſail.

Q. Did you ſee the *Dorſetſhire* at all?

A. I did not particularly ſee her; but I ſaw the Ships to Windward; of which the *Dorſetſhire* muſt have been one.

Q. Were they lying to, or under way?

A. I can't ſay; for my Attention being chiefly confined to the getting into my Station again, I did not obſerve.

Q. Do you think any of thoſe Ships to Windward were within Gun-ſhot of the Enemy?

A. No.

Q. Where were the *Spaniſh* Ships aſtern, or in what Poſition from you?

A. They were about the ſame Diſtance from us, as we were from the Admiral, and nearly abreaſt of us, and they neared us in coming up.

Q. Do you know whether our Ships aſtern of the *Marlborough* were in a Line with one another?

A. I don't know, whether they were or not; for after the Admiral began to engage, I did not go to look to Windward, but kept conſtantly on the Starboard Side of the Quarter-deck; and could ſee nothing that paſſed ahead, or to Windward; and I never ſaw thoſe Ships open to Leeward of my Foreſail.

Q. Was it in their Power to have engaged as near as the Admiral and *Marlborough*?

A. Yes; to be ſure they might, as they were to Windward: For I ſaw a Body of Smoke drive to Leeward of my Foreſail, between me and the *Marlborough*, which frequently took away my View of the Admiral and *Marlborough*; ſo that I could only ſee the Two Flags over that Body of Smoke, for a conſiderable time together.

Q. If they had bore down, and done their Duty, do you think that the *Spaniſh* Admiral and his Second could have eſcaped?

A. No:— I think they could not.

Q. Could the *Spaniſh* Ships, that were coming up, have fetched the *Marlborough*?

A. I can't ſay:— I had only an oblique View of the *Marlborough* and them, and therefore could not judge; but I ſaw that they did not weather the *Marlborough*, but went to Leeward of her.

Q. Did they keep their Wind?

A. Yes; pretty near.

Q. How was the Wind? Was it before, abaft, or upon your Beam?

A. Upon our Beam, or thereabouts; or rather abaft.

Q. Did you obſerve the *Spaniſh* Admiral's Second?

A. Yes.

Q. Did you ſee any Ship engage her?

A. Yes; the *Marlborough*.

Q. Did you ſee the *Dorſetſhire* engage the *Real*'s Second?

A. No, I did not; ſhe not being within my Obſervation.

Q. Do you think ſhe ought, in the Situation ſhe was in?

A. I expected ſhe would.

Q. What Diſtance was you from the *Dorſetſhire*, when the Action began?

A. I can't ſay poſitively:— We were about Two Leagues from the Admiral, and ſhe was the next Ship but one to him.

Q. Was ſhe in the Line?

A. She was never in a Line with the Admiral and *Marlborough*, while the Admiral continued to engage.

Q. Did you ſee no Ship bear down with the Admiral, but the *Marlborough*?

A. No:— I ſaw no other:— Soon after they began to engage, I ſaw a Cloud of Smoke drive from the Ships to Windward, which took off from my View:— I did not ſee the *Dorſetſhire*, or any of thoſe Ships, bear down to Leeward; ſo as to be aſtern of the *Marlborough*.

Q. Did you obſerve, when the *Marlborough*'s Maſts were gone?

A. Yes.

Q. Did you take notice whether any of thoſe ſternmoſt Ships bore down to aſſiſt the *Marlborough* then?

A. No;— not one of them did bear down; for I never ſaw any of them to Leeward:—

I ſaw the *Namur* and *Marlborough* between the Starboard-Leech of my Foreſail and Spritſail, and the Vice-Admiral's Ship, which was the only Part from whence I could ſee them; and had the other Ships borne down, I muſt have ſeen them alſo.

Q. What was you doing then?

A. Making all the Sail we could.

Q. How was the Vice-Admiral from you then?

A. Upon my Starboard-Bow; but when the Fleet were in a Line abreaſt, he was upon my Starboard-Quarter; and when he hauled up, I hauled to Windward of him, in order to get ahead of him.

Q. Did you ever ſee the *Dorſetſhire*, or any of the Ships aſtern of her, fire at the Enemy?

A. Not particularly; —— but the Cloud of Smoke, which I ſaw drive to Leeward, and cover the *Marlborough* and *Namur*, muſt have aroſe from the Fire of thoſe Ships.

Q. Was there One or Two Ships aſtern of the *Spaniſh* Admiral?

A. I think there were Two; and that one of them bore away without Firing at all.

Q. How may *Spaniſh* Ships were there aſtern of the *Real* in all?

A. I think there were Six, at firſt; though afterwards I don't remember to have ſeen more than Five; for what became of the other, which was the Second from the *Real*, I don't well remember: I had a Perſon attended me with Pen and Ink, to remark what paſſed; and he made a Remark, that ſhe bore away without Firing at all; and I believe ſhe did.

Q. At what Time did the *Marlborough* loſe her Maſts?

A. About Three o'Clock.

Q. What Time did the Fireſhip blow up?

A. About Five o'Clock.

Q. Between thoſe Times, did any of our Four Ships aſtern bear down and aſſiſt the *Marlborough?*

A. I did not ſee any of them to Leeward of my Foreſail, which I muſt have done if they had bore down; and therefore I am poſitive they did not bear down near enough to aſſiſt her.

Q. Did the *Marlborough* engage from Three o'Clock, when ſhe loſt her Maſts, till Five o' Clock, when the Fireſhip blew up?

A. I think ſhe engaged till the *Real* bore away.

Q. What o'Clock was it when the *Real* bore away?

A. I think, before Four o'Clock.

Q. Did not the *Real* bear away, before the Fireſhip blew up?

A. It was when the Fireſhip was going down. —I think it might be before Four o'Clock.

Q. Do you think the Admiral and *Marlborough* engaged within Muſquet-ſhot?

A. Yes, they ſeemed ſo to me at firſt.

Q. Did you obſerve any of our Four Ships aſtern of the *Marlborough* engage the Enemy ſo near?

A. No: —None but the Admiral and *Marlborough* that were ſo cloſely engaged. — There was no Ship aſtern of the *Marlborough*, during the whole Engagement; that I could plainly ſee: For though I was minding my own principal Buſineſs, to get ahead of the Vice-Admiral, yet when the *Torbay* was thrown to, by the Swell againſt her Helm, I ſaw ſome Ships to Windward of the *Marlborough*, firing; but it was out of Reach of Point blank.

Q. What time did you loſe the Wind?

A. Soon after the Beginning of the Action.

Q. What Way had the Ships?

A. At the Beginning of the Engagement they went about a Knot and an Half; and then decreaſed gradually, till it was leſs than a Knot, till we had ſcarce Steerage-way, and the Helmſmen were frequently obliged to fetch Water.

Q. Don't you think there was Wind enough, if you had ſhivered all your After-Sails, to have wore the *Torbay?*

A. I think not: — I attended the Sails very exactly, from the Time the Action began; and when the Signal was made to give over Chace, we went only a Knot.

Q. Did you ſee the *Hercules*, when the *Marlborough*'s Maſts were gone?

A. Yes.

Q. What Ship was engaged with her then?

A. None fired upon her but the *Marlborough*, that I ſaw.

Q. Where was the *Dorſetſhire* then?

A. She was to Windward of the *Marlborough*; and, I judge, by the Smoke going down towards the *Marlborough*, the *Dorſetſhire* muſt have been one of the Ships upon my Larboard-Bow.

Q. Do you think the *Dorſetſhire* could have bore down to ſuccour the *Marlborough*, and engage the *Hercules?*

A. Yes; no doubt, all the Ships to Windward of the *Marlborough* might.

Q. Had they more Wind in the Battle than you?

A. It appeared to me as if they had.

Q. Did you obſerve whether the Four *Spaniſh* Ships had more Wind than you?

A. I think they had; for I did not obſerve their Sails to flap, as ours did.

Q. What Diſtance was you from them at the Beginning of the Engagement?

A. About Five Miles.

Q. Were they nearer to you at any Time afterwards?

A. They neared us continually, by their Line not being parallel to ours; for the *Spaniſh* Line was ſo far from being parallel to ours, that as we ſteered for the *Marlborough* and *Real*, one of the *Spaniſh* Ships, ahead of the *Real*, opened to my View.

Q. Did the Swell take you on your Weather-Bow, Lee-Bow, or how?

A. It

A. It was a Weſtern Swell, — a very ugly Swell,—upon our Lee-Bow.

Q. Do you think our Four Ships aſtern of the *Marlborough*, could have cut off the Four *Spaniſh* Ships coming up aſtern?

A. No doubt, if they had been aſtern of the *Marlborough*:—If they had bore down when the Admiral and *Marlborough* did, they would have been ready in their Station to have received them as they came up.

Q. Did they cloſe with their Admiral before he bore away?

A. No.

Q. Did any of the Four *Spaniſh* ſternmoſt Ships fire at the Fireſhip?

A. Yes.

Q. Did they weather the *Marlborough?*

A. No, they went to Leeward of her.

Aſked by the Priſoner,

Q. How far was the *Hercules* from the *Real*, at the Beginning?

A. I can't be certain, but I think ſhe was at a proper Diſtance.

Q. What do you mean by a proper Diſtance?

A. As near as Two Ships can be, without Danger of running foul of one another.

Q. Did you ſee any Ship engage the *Hercules* at all.

A. I ſaw none but the *Marlborough*.

Q. Upon your Oath, Did you ſee the *Marlborough* engage the *Hercules?*

A. Yes, I believe ſhe did:—I could not ſee the Direction of their Guns; but I ſaw no other Ship to fire at her.

Q. Upon your Oath, was there no Ship ahead of you then?

A. I can't ſay; for I could ſee nothing ahead of me, becauſe of my Spritſail, as I ſaid before.

Q. How do you know the *Dorſetſhire* was to Windward of the Line?

A. I do not poſitively ſay ſhe was to Windward of the Line, after the Admiral hauled off; but ſhe never was ſo far to Leeward as to be in a Line with the *Namur* and *Marlborough*, while they were both engaged with the *Real*; for if ſhe had, I muſt have ſeen her aſtern of the *Marlborough*, as plain as I ſaw the *Marlborough* aſtern of the *Namur*.

Q. Whether did you ſee the *Marlborough*, or any other Ship, engage the *Hercules?*

A. Only the *Marlborough*.

Q. Did you ſee any Ship in a Line with the *Namur?*

A. I ſaw only the *Marlborough*.

Q. How long did you ſee her aſtern of the *Namur?*

A. Till the Admiral hauled off.

Q. How long was that?

A. I don't remember exactly; but I think it was before the *Marlborough*'s Maſts were gone: I did not mean, that I ſaw the *Namur* and *Marlborough* engage the *Real* the whole time, till the *Namur* hauled off; for, after the Beginning of the Engagement, my Sight was intercepted by the Smoke; ſo that I only ſaw them by Intervals.

Q. Did the *Real* and *Hercules* begin to fire at the ſame time?

A. I can't ſay: I ſaw only the *Real* return the Admiral's rfie.

Q. How long after that did the *Hercules* begin?

A. I could not ſee, for ſome time, for the Smoke.

Q. Did you ſee the *Hercules* fire at all?

A. Yes, I ſaw her fire.

Court asked,

Q. Did you ſee no Ship bear down, and engage the Enemy, after the *Marlborough*'s Maſts were gone?

A. No.

Q. Might not that Cloud of Smoke, which you ſaw, have come from ſome Ship, aſtern of the *Marlborough*, that engaged the *Hercules?*

A. I think that could not be; becauſe I ſaw the *Marlborough* from the Starboard-ſide, and the Cloud of Smoke aroſe from our Larboard-ſide, or right ahead.

Q. Did you never ſee any of the Four Ships give any Aſſiſtance to the *Marlborough*, after her Maſts were gone? Or near enough to the Enemy to do Execution?

A. No:—None of them engaged within Point-blank: Nor did I ſee any of them give Aſſiſtance to the *Marlborough*.

Priſoner aſked,

Priſoner. Captain *Gaſcoigne* has been very particular, that we were not within Point-blank; I would aſk him,

Q. What do you mean by Point-blank?

A. A Cable's Length and an Half.

Q. No more?

A. No, no more.

Q. Will a Shot go no farther than a Cable and an Half in a direct Line?

A. I never tried it; but ſo the Engineers ſay in their Tables.

Q. I ſuppoſe you have fired Guns, and muſt be able to judge from your own Experience?

A. It is difficult to ſtrike a Mark even at that Diſtance, at Sea, becauſe of the Motion of the Ship.

Q. How far was the *Dorſetſhire* off?

A. I did not mind the *Dorſetſhire* particularly.

Q. Did you obſerve, after the *Marlborough*'s Maſts were gone, the Four Ships to be in the ſame Situation as before?

A. I did not obſerve them at all:—I did not look to Windward.

Court aſked,

Q. Did the *Dorſetſhire* not bear down to Leeward at all?

A. I can't be ſure:—She might be nearer after the Admiral hauled off:—But no Ship was aſtern of the *Marlborough* at all.

Q. What Ships did you ſee bear down in a Line abreaſt with the Admiral?

A. I only ſaw the *Marlborough* bear down with the Admiral; but none of the others.

Q. Did they continue lying to?

A. I don't know.

Q. How far was you from the *Spaniſh* Admiral, when the Admiral bore down?

A. I can't exactly ſay; but we were then about Two Leagues from Admiral *Mathews*, who was not far from the *Spaniſh* Admiral, when I ſaw him open to Leeward of my Sails, in his Bearing down.

Q. How long was he in Bearing down?

A. I don't know; for I could not ſee him, till he came open with the Leech of my Foreſail; and then he was right before the Wind.

Q. Did you ſee the Fireſhip blow up?

A. Yes; my Eyes were never off from her from the Time ſhe came open to Leeward of my Sails, till ſhe blew up.

Q. Did no Ship bear down to cover her?

A. No.

Q. Did you expect, that the Ships aſtern of the *Marlborough* ſhould?

A. I did expect it.

Q. What Ship was neareſt to her?

A. The *Marlborough* ſeemed to me to be the neareſt Ship to her; for no Ship beſides came open to Leeward of my Sails.

Q. Had your Ship, at that time, Steerage-way?

A. Yes; ſhe had at that time.

Q. Did you obſerve the *Real* to be damaged?

A. Yes; her Main Yard was ſhot in the Slings.

Q. Did you obſerve the *Hercules* to have received any Damage?

A. No; I did not take notice that ſhe had.—The *Hercules* kept a briſk Fire; and it was returned very briſkly; which appeared to me to be only from the *Marlborough*.

Then he withdrew.

Henry Madox, Midſhipman on board the *Neptune*, called in, and ſworn.

His Depoſition was read, as follows; *viz.*

Henry Madox, *late Midſhipman of his Majeſty's Ship* Neptune, *maketh Oath*;

THAT, on the 11th of *February*, 1743, about Half an Hour paſt Nine o'Clock, a Signal was made for a Line of Battle ahead; and, about Ten o'Clock, a Signal was made to engage the Enemy; and, about Noon, the Admiral and *Marlborough* dore down upon and engaged the *Spaniſh* Admiral, and his Second aſtern.

That the Four Ships aſtern of the *Marlborough*, which he takes to be the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, bore down towards the Enemy, when the Admiral and *Marlborough* did; but not ſo far, or ſo near the Enemy; nor did they bear down ſo near the Enemy as the Admiral or *Marlborough*, during any Part of the Engagement; but kept to Windward of them.

That, about Two o'Clock, the *Marlborough* was diſabled, having her Main and Mizen Maſts ſhot away; and appeared to be in great Diſtreſs.

That, in the Afternoon, the *Anne Galley* Fireſhip bore down towards the *Real*; and ſhe was not covered or conducted by any of his Majeſty's Ships; and that ſhe was deſtroyed without Effect.

That the ſaid Four Ships aſtern of the *Marlborough* might have gone to her Aſſiſtance, or have covered or conducted the Fireſhip, for any thing that appeared to this Deponent to hinder them; but that they, nor any of them, did perform either of thoſe Services.

Henry Madox.

Sworn this 30th *Sept.* 1745.
before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Forecaſtle.

Q. What Diſtance was you from the Admiral, when he began to engage?

A. About Four or Five Miles.

Q. Did you ſee the *Dorſetſhire* bear down, in order to engage the Enemy?

A. Yes; but not ſo near as the Admiral did.

Q. Did you ſee her fire upon the Enemy, within Point-blank?

A. I ſaw ſeveral Shot from both Sides fall ſhort.

Q. Then ſhe was not within Point-blank?

A. I do not apprehend, that ſhe was.

Q. Did you ſee the Fireſhip go down?

A. Yes.

Q. Did any Ship go down to cover her?

A. No.

Q. Did you ſee any of the Enemy's Shot go over the *Dorſetſhire*, or any of our Four Ships aſtern of the *Marlborough*?

A. I can't ſay.

Q. How long have you been at Sea?

A. Nine Years.

Q. Did you ever ſee any of thoſe Four Ships either to Leeward, or right aſtern of the *Marlborough*?

A. I did not.

Q. What Way did the Ships make?

A. From about Two Knots, to a Knot at the leaſt.—There was a great Swell.

Q. Had you Steerage-way all the time?

A. I was not on the Quarter-deck; and don't know, whether we were ever obliged to put the Helm quite over.

Q. Were any of thoſe Four Ships ever ſo near the Enemy, as to do Execution?

A. I don't know how far random Shot can do Execution; but they were not within Point-blank.

Q. Did you ſee the *Marlborough*'s Maſts carried away?

A. Yes.

Q. Were

Q. Were thoſe Four Ships to Windward of the *Marlborough*, when her Maſts were gone?

A. Yes.

Q. Are you ſure of it?

A. Yes:—They were then upon her Weather-Quarter.

Q. Did your Sails flap to the Maſts?

A. I don't remember.

Q. Did your Foreſail return, upon the Pitching or Rolling of the Ship?

A. I can't ſay.—I ſtood abaft the Foreſail.

Q. Did your Top-gallant Sails ſleep?

A. Yes, I am ſure of that.

Q. How many Ships were there aſtern of the *Spaniſh* Admiral?

A. I believe, Five.

Q. When you fired a Broadſide, What Diſtance was you from the Enemy?

A. Not within random Shot;—about Two Miles, or better.—The Guns were laid down to the greateſt Range.

Aſked by the Priſoner,

Q. Did you ſee the *Dorſetſhire* among our Four Ships aſtern of the *Marlborough?*

A. Yes.

Q. Could you diſtinguiſh her?

A. I can't ſay.

Q. Did you ſee the *Dorſetſhire* particularly among them?

A. No:—I only ſaw the Four Ships.

Q. Did you obſerve thoſe Four Ships to be in a Line, or were they to Windward or Leeward of each other?

A. I think they were pretty near in a Line.

Q. What Ship's Shot did you ſee fall ſhort of the Enemy?

A. I don't know from any particular Ship; but they did from the Four Ships.

Some of the Court offering to ſhew the Witneſs a Plan of the Action, to ſee if he could diſtinguiſh the Ships, the Priſoner objected to it; upon which the Plan was laid aſide.

Then he withdrew.

Lieutenant *Bellamy*, of the *Torbay*, called in, and ſworn.

His Depoſition was read, as follows; *viz.*

Leonard Bellamy, *late Lieutenant of his Majeſty's Ship the* Torbay, *maketh Oath*;

THAT he was Lieutenant on board the ſaid Ship, during the Month of *February*, 1743; which Ship was ſtationed, on the 11th of the ſaid *February*, in the Line of Battle, in his Majeſty's Fleet in the *Mediterranean*, under the Command of Admiral *Mathews*, the Firſt Ship ahead of Vice-Admiral *Leſtock*, and in his Diviſion of the ſaid Fleet.

That, about half an Hour paſt Nine o'Clock in the Morning of the 11th of ſaid *February*, a Signal was made for a Line ahead; and, about Half an Hour paſt Ten, a Signal was made to engage the Enemy.

That, about Half an Hour paſt One o'Clock of that Day, the *Namur* and *Marlborough* bore down, and engaged the *Real*, the *Spaniſh* Admiral's Ship, and his Second aſtern.

That Captain *Burriſh*, in the *Dorſetſhire*; Captain *Ambroſe*, in the *Rupert*; and Captain *Williams*, in the *Royal Oak*; were in Sight of the Signal to engage, and of the Engagement.

That, about Half an Hour paſt Three, the *Marlborough*'s Maſts were ſhot away; and that the *Dorſetſhire*, *Eſſex*, and *Rupert*, and *Royal Oak*, might have gone down to her Aſſiſtance, being to Windward of the Line, and their Stations; but neither of them did.

That he ſaw the *Anne-Galley* Fireſhip go down towards the *Real*, between Four and Five o'Clock; and that ſhe was not covered or conducted by any Ship of his Majeſty's Fleet: That the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, might have gone down, and covered her; but neither of them did; and that they were reſpectively to Windward; and none of them engaged with the Enemy at that time, as he knows.

Leonard Bellamy.

Sworn before me, this 11th Day of *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. You ſay, The *Dorſetſhire* did not bear down to cover the Fireſhip, or come ſo near the Enemy, as to do Execution?

A. I did not obſerve her to do ſo.

Q. Did you ſee her engage?

A. I ſaw ſeveral Shot fall ſhort; which I believe were the *Dorſetſhire*'s.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. Did you ſee the *Marlborough*'s Maſts go away?

A. Yes.

Q. Did the *Dorſetſhire* then bear down?

A. No; none of the Four Ships bore down.

Q. Could you ſee the *Dorſetſhire?*

A. I could not diſtinguiſh her in particular.

Q. From whence did you ſee the *Dorſetſhire*, and the other Three Ships?

A. From the Larboard-Bow.

Q. Did you ſee the *Spaniſh* Admiral's Second engaged any Part of the Time?

A. I did not.

Q. Are you poſitive you never ſaw any of the Four Ships bear down?

A. I can't ſay that I did.

Q. How much was the leaſt that your Ship went?

A. I can't ſay, without ſeeing the Log-Book; but I think ſhe had Steerage-way all the time of the Engagement.

Q. How long did the *Marlborough* engage after her Maſts were gone?

A. As ſoon as ſhe was clear of the Raft, ſhe continued Firing; but I can't ſay how long ſhe continued it.

Q. Did

Q. Did you ſee the Ship aſtern of the *Spaniſh* Admiral engage at all?

A. No; I can't ſay that I did.

Q. When did you ſee the Four Ships, ſtationed aſtern of the *Marlborough*, upon your Weather-Bow?

A. About Three o'Clock;— about Two Hours after the Engagement began.

Q. Did you never obſerve the *Dorſetſhire* to Leeward, or right aſtern of the *Marlborough*, during the Engagement?

A. No; I did not obſerve it.—I did not ſee her ſo.

Q. Did your Sails flap to the Maſts?

A. Yes; they did.

Q. How was the Wind?

A. Abaft the Beam.

Aſked by the Priſoner,

Q. Did you ſee any of the Ships, aſtern of the *Marlborough*, fire? Did you ſee the *Dorſetſhire* fire at the Enemy?

A. I believe all the Four Ships fired.

Q. Did you ſee the *Dorſetſhire* fire?

A. Yes; I believe the *Dorſetſhire* did fire.— Moſt of the Ships, aſtern of the *Marlborough* were then firing, but at too great a Diſtance.— I can't ſay, whether Two, or Three, or all.

Court aſked,

Q. What Ships did they fire at?

A. At the Enemy.

Q. At what Ships of the Enemy? For you ſay, You did not ſee the *Hercules* engage?

A. It muſt be with the Ship aſtern of the *Real*; I don't know her Name:— But the Shot fell ſhort.

Then he withdrew.

John Maſter, Maſter of the *Torbay*, was called in, and ſworn.

His Depoſition read, as follows; *viz.*

John Maſter, *late Maſter of his Majeſty's Ship* Torbay, *maketh Oath*;

THAT he was Maſter on board of ſaid Ship, during the Month of *February*, 1743, in his Majeſty's Fleet, in the *Mediterranean*, under the Command in Chief of Admiral *Mathews*.

That, in the Morning of the 11th Day of *February*, a Signal was made for the Line of Battle ahead; and that Captain *Burriſh* commanded the *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, and Captain *Williams* the *Royal Oak*; and were reſpectively in Sight of the ſaid Signal, as this Deponent believes; being ſtationed aſtern of the *Marlborough*, as appeared to this Deponent, by the Line of Battle which he then ſaw.

That the Combined Fleets of *France* and *Spain* were about Five Miles diſtant from the Centre of his Majeſty's Fleet, and in Line of Battle, when the ſaid Signal was made.

That, between Ten and Eleven o'Clock, Admiral *Mathews* made the Signal to engage the Enemy; and, about Half paſt Twelve o'Clock, the Admiral in the *Namur*, the *Marlborough*, and *Norfolk*, bore down upon and engaged in Fight with his Majeſty's Enemies; and the *Marlborough* was diſabled by having her Main and Mizen Maſts ſhot away, and was hard preſſed in the ſaid Engagement.

That the *Dorſetſhire*, *Rupert*, and *Royal Oak*, bore down with the Admiral, but not ſo far or ſo near the Enemy as he did, and not far enough to form the Line; and that they might have bore down nearer, and got into their Stations, there being Wind ſufficient for that Purpoſe, if the Captains of thoſe Ships had thought proper; but they did not; and they did not aſſiſt the *Marlborough*, though they were not then engaged within point-blank Shot with any of his Majeſty's Enemies.

That the *Anne Galley* Fireſhip bore down upon the *Real*; and was not covered or conducted by any of hisMajeſty's Ships; and paſſed in Sight and View of the *Dortſetſhire*, *Eſſex*, and *Rupert*, who were at hand ready to have conducted and covered her; which they might have done; and were then reſpectively to Windward of their Station, and paſſed very near the *Eſſex* and *Dorſetſhire*, and had not any Aſſiſtance given her from any of thoſe Ships; and that ſhe was blown up without any Effect; and they were not engaged within point-blank Shot of the Enemy at that time.

John Maſter.

Sworn before me, this 24th *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. What Diſtance was you from the Admiral, when he began to engage?

A. About Five or Six Miles.

Q. Did you obſerve the *Dorſetſhire?* Relate what you know of her.

A. I ſaw the Four Ships aſtern of the *Marlborough*, keep to Windward; and, by the Line of Battle, the *Dorſetſhire* was one of them.— They were upon our Weather-Bow; and I told the Captain, I was ſurpriſed they did not bear down to aſſiſt the *Marlborough*; and Captain *Gaſcoigne* ſaid, He was ſurpriſed at it too.

Q. Was the *Dorſetſhire* ever within point-blank Shot of the Enemy?

A. I don't believe ſhe ever was within Point-blank; which I judge to be about a Quarter of a Mile.

Q. Did you ſee no Ship go down to the Aſſiſtance of the *Marlborough?*

A. No.

Q. Did you ſee no Shot fired at the Ship aſtern of the *Real?*

A. I ſaw ſeveral Shot go acroſs our Bow, and fall ſhort.

Q. Did no *Spaniſh* Ship fire at the *Dorſetſhire?*

A. No; not that I ſaw.

Q. How far did you go in the Whole, after the Engagement began?

A. About Five Miles: We had hardly Steerage-way.

Q. Then how came you to wonder, that the other Ships did not bear down? Was there Wind ſufficient for the *Dorſetſhire*, or any of thoſe Ships, to have bore down into the Line?

A. Yes, I think there might; as they would have croſſed the Swell.

Q. How was the Wind?

A. Upon the Beam.

Q. How did you ſteer?

A. For the *Marlborough*.

Q. Could you have wore?

A. The Swell would have wore us.

Q. Which Way did it come?

A. Upon our Weather-Bow.—The *Marlborough* loſt her Maſts about Three o'Clock; and I believe the *Dorſetſhire*, and other Ships aſtern of her, had more Wind than we had.—We went very little then; there was a great Swell, and our Sails flapped to the Maſts.

Q. How far diſtant was the *Namur* from the *Real*, when ſhe firſt bore down to her?

A. I believe, about Four Miles.

Q. What Sail had the Four Ships ſet, when you ſpoke to Captain *Gaſcoigne*?

A. I think, they were under their Topſails.

Q. Are you certain of it.

A. I can't be particular.

Q. How much was the leaſt, that your Ship went, during the Engagement?

[He looks at his Log-Book, or a Copy of it; and then ſaid:]

A. Six Fathom was the leaſt;—that was about Four o'Clock:—But, when they firſt bore away, there was more Wind:—Our Ship was the worſt ſailing Ship among them; and had been off the Ground above Two Years and a Half: The *Namur* had been off Three Years, and was ſtill a better Sailer.

Then he withdrew.

Lieutenant *Bate*, of the *Ruſſel*, called in, and ſworn.

His Depoſition read, as follows; *viz.*

Elias Bate, *late Lieutenant of his Majeſty's Ship* Ruſſel, *maketh Oath*;

THAT he was Lieutenant on board the ſaid Ship during the Month of *February*, 1743. in his Majeſty's Fleet, in the *Mediterranean*, under the Command of Admiral *Mathews*.

That, on the 11th of the ſaid Month of *February*, about Ten o'Clock, the Admiral made a Signal to engage the Enemy.

That Four Ships were ſtationed aſtern of the *Marlborough*, in Admiral *Mathews*'s Diviſion of the ſaid Fleet; but cannot ſay what Ships they were.

That, about Half an Hour paſt One o'Clock, the Admiral and *Marlborough* bore down upon, and engaged the *Real*, the *Spaniſh* Admiral's Ship, and his Second aſtern; and that the *Marlborough* was diſabled in the ſaid Engagement, having her Main and Mizen Maſts ſhot away; and appeared to be in great Diſtreſs: And that the Captains of the ſaid Four Ships, ſtationed aſtern of the *Marlborough*, were reſpectively in Sight of the ſaid Engagement, and of the Diſtreſs the *Marlborough* was in; and were capable of yielding her Aſſiſtance, as this Deponent believes; but that the ſaid Captains did not bear down, and engage, as the Admiral and *Marlborough* did; nor did they go to the Aſſiſtance of the *Marlborough*, but kept to Windward, during all, or the greateſt Part of, the ſaid Engagement, as this Deponent obſerved.

That, about Four o'Clock, the *Anne Galley* Fireſhip bore down towards the *Real*, in order to burn her, as this Deponent believes; and that ſhe was not covered by any of his Majeſty's Ships; but was blown up, without any Effect: And that the ſaid Four Ships, or any of them, might have bore down, and covered her, had the Captains of thoſe Ships thought proper ſo to have done; and that the ſaid Ships were, at that time, not in Action; but were reſpectively to Windward thereof.

Elias Bate.

Sworn before me, this 20th *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. Declare what you know in relation to the *Dorſetſhire*, during the Engagement?

A. I did not know where the *Dorſetſhire* was, the Line of Battle being kept a Secret in our Ship; but I ſaw the *Marlborough* in Diſtreſs, and the Fireſhip blow up; and no Ships went down to cover the one, or aſſiſt the other: And I ſaw Four Ships aſtern of the *Marlborough*, which might have aſſiſted her.

Q. What Diſtance was the *Marlborough* from you, when ſhe loſt her Maſts?

A. About Four Miles.

Q. Did no Ship bear down to aſſiſt her?

A. No: The Four Ships, aſtern of the *Marlborough*, kept to Windward of her:—I could not tell their Names; but I wondered they did not bear down to her Aſſiſtance.

Q. Were they then within Point-blank of the Enemy?

A. No.

Q. What Diſtance were they from the Enemy?

A. I can't ſay:—They did not appear to me to be within Gun-ſhot of the Enemy.

Q. Could they have bore down with the Admiral, or to have aſſiſted thoſe Ships?

A. Yes.

Q. Could they have gone down to cover the Fireſhip?

A. Yes.

Q. Was there Wind enough?

A. Yes: The ſame Wind, that carried the Fireſhip down, would have carried them down.

Q. How much did you go, when the Fireſhip blew up?

A. A Knot and a half:—We were a clean Ship.

Q. How long had you been off the Ground?

A. About Eight Months.

Then he withdrew.

Lieutenant *Henry Richard Dubois*, late Midſhipman on board the *Ruſſel*, called in, and ſworn.

His Depoſition read, as follows; *viz.*

Henry Richard Dubois, *late Midſhipman of his Majeſty's Ship the* Ruſſel, *maketh Oath*;

THAT he was Midſhipman on board the ſaid Ship during the Month of *February*, 1743. in his Majeſty's Fleet, in the *Mediterranean*, under the Command in Chief of Admiral *Mathews*.

That, in the Morning of the Eleventh of ſaid *February*, a Signal was made for the Line of Battle ahead; and that Captain *Burriſh* commanded his Majeſty's Ship the *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, and Captain *Williams* the *Royal Oak*; and were reſpectively in Sight of the ſaid Signal, as this Deponent believes.

That the Combined Fleets of *France* and *Spain* were about Three or Four Miles diſtant from the Centre of his Majeſty's Fleet, and in a Line of Battle, when the ſaid Signal was made.

That, about Eleven o'Clock, Admiral *Mathews* made the Signal to engage the Enemy; and, about One o'Clock, the Admiral in the *Namur*, the *Marlborough*, and *Norfolk*, bore down upon, and engaged in Fight with, his Majeſty's Enemies: And the *Marlborough* was diſabled, by having her Main and Mizen Maſts ſhot away; and was hard preſſed in the ſaid Engagement.

That the *Dorſetſhire*, *Rupert*, and *Royal Oak*, bore down with the Admiral; but not ſo far, or ſo near the Enemy, as he did, and not far enough to form the Line; and that they might have bore down nearer, and got into their Stations, there being Wind ſufficient for that Purpoſe, if the Captains of thoſe Ships had thought proper.

That the *Anne Galley* Fireſhip bore down upon the *Real*; and was not covered or conducted by any of his Majeſty's Ships; and paſſed in Sight and View of the *Dorſetſhire*, *Eſſex*, and *Rupert*, who were at hand, ready to have conducted and covered her; which they might have done; and were then reſpectively to Windward of their Stations; and, though ſhe paſſed very near the *Eſſex* and *Dorſetſhire*, yet ſhe had not any Aſſiſtance given her from them, or any other of thoſe Ships; and that ſhe was blown up, without any Effect.

H. R. Dubois.

Sworn before me, this 20th *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Relate to the Court, what you know of the *Dorſetſhire?*

A. She ſeemed neareſt to the Enemy of the Four Ships; and, when the Fireſhip went down, I think, ſhe might have gone down to cover her, or aſſiſt the *Marlborough*.

Q. Where was you quartered?

A. Upon the Quarter-deck:—But, as we were not in Action, I was ſometimes on the Forecaſtle, and ſometimes at the Maſt-Head.

Q. What Diſtance was you from the *Dorſetſhire*, at the Beginning of the Engagement?

A. We were about Six Miles from the *Namur*.

Q. Was the *Dorſetſhire* within point-blank Shot of the Enemy?

A. I imagine, not, by their Shot falling in the Water; for they ſeemed almoſt to meet:—The *Dorſetſhire*, and the other Ships to Windward of the *Marlborough*, fired at too great a Diſtance.

Q. Could our Four Ships, aſtern of the *Marlborough*, have gone nearer, if they had a mind?

A. Yes; I believe they could.

Q. How many Knots did you go then?

A. About a Knot:—There was little Wind, and a great Swell.

Q. Had you Steerage-way?

A. Yes.

Q. Did any of the Four Ships, aſtern of the *Marlborough*, bear away with the Admiral and *Marlborough?*

A. All ſeemed to bear down; but ſome more than others.

Q. Did they continue bearing down, after the Admiral and *Marlborough* brought up; or did they bring up at the ſame time?

A. They brought up at the ſame time to Windward.

Q. Did you ſee the *Dorſetſhire* bear down afterwards, during the Engagement?

A. I can't ſay I did; but I have heard they did.

Q. With what Sail did the Admiral bear down?

A. With his Topſails and Foreſail.

Q. With what Sail did the *Dorſetſhire* bear down?

A. I cannot ſay.

Q. Did you ſee the Fireſhip blow up?

A. Yes.

Q. Did you then ſee the *Marlborough?*

A. Yes.

Q. Did you then ſee the *Dorſetſhire*, or the Ships aſtern?

A. I cannot ſay particularly:—I ſaw Ships aſtern.

Q. Which was neareſt the Enemy?

A. The *Dorſetſhire*:—I know her, by being the largeſt Ship.

Aſked by the Priſoner,

Q. Did you obſerve any Ships between the Four Sail aſtern of the *Marlborough* and you, fire?

A. The Vice-Admiral did.

Q. Did any other? Did the *Dunkirk* and *Cambridge?*

A. I don't remember.

Then he withdrew.

Lieutenant *Thomas Preſcott*, of the *Buckingham*, called in, and ſworn.

His Depoſition read, as follows; *viz.*

Lieutenant Thomas Preſcott *maketh Oath*;

THAT he was Lieutenant on board his Majeſty's Ship the *Buckingham*, in the *Mediterranean*, in the Month of *February*, 1743.

That, about Eleven o'Clock of the 11th of ſaid *February*, Admiral *Mathews* made the Signal to engage; and, about Half an Hour paſt Twelve, began to fire upon the *Real*.

That all the Captains aſtern were in Sight of the Signal to engage, and of the Engagement.

That none of them bore down into their Stations in the Line, but the *Marlborough*, and engaged, when the Admiral did; but they might, if they would.

That he ſaw the Fireſhip bear down upon the *Real*; and that ſhe went near the *Dorſetſhire*; and that ſhe was not covered by any Ship; but the *Dorſetſhire*, *Eſſex*, or *Rupert*, might have covered her, if they would; but they did not: And ſhe was burnt, without any Effect.

Tho. Preſcott.

Sworn before me, this 9th Day of *Sept.* 1745.

Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. On the Lower-Gun-deck; but, not being in Apprehenſion of Engaging, I went upon the Upper-deck.

Q. Did you ſee the *Dorſetſhire* fire?

A. Yes;—but I cannot judge, whether within Point-blank, or not.

Q. What Diſtance was the *Buckingham* from the *Dorſetſhire?*

A. About Five Miles.

Q. Was the *Dorſetſhire* within Gun-ſhot, when ſhe fired?

A. I cannot tell.

Q. Did you ſee the *Marlborough*'s Maſts go away?

A. Yes.

Q. When the *Marlborough*'s Maſts were gone, did you obſerve the *Dorſetſhire* fire? And at what Diſtance?

A. I ſaw her Firing; and ſhe ſeemed to be pretty near the *Real*.

Q. Did you ſee any Shot from the Enemy go over the *Dorſetſhire?*

A. There were Shot went over her; but I don't know from what Ship.

Q. Did you never ſee the *Dorſetſhire* to Leeward of the *Marlborough?*

A. No.

Q. How far was ſhe to Windward of her?

A. About a Quarter of a Mile.

Q. Did you never ſee her nearer?

A. No.

Q. How far was the *Marlborough* to Windward of the Enemy?

A. I can't ſay.

Then he withdrew.

John Pope, Midſhipman on board the *Buckingham*, called in, and ſworn.

His Depoſition read, as follows; *viz.*

John Pope, *late Midſhipman of his Majeſty's Ship the* Buckingham, *maketh Oath*;

THAT he was Midſhipman on board the ſaid Ship during the Month of *February*, 1743. in his Majeſty's Fleet, in the *Mediterranean*, under the Command of Admiral *Mathews*.

That on the 11th of the ſaid Month of *February*, between Nine and Ten o'Clock in the Forenoon, the Admiral made a Signal for the Line of Battle ahead; and, about Eleven o' Clock, he made a Signal to engage the Enemy.

That Four Ships were ſtationed aſtern of the *Marlborough*, in Admiral *Mathews*'s Diviſion of the ſaid Fleet; but cannot ſay what Ships they were.

That, about Half paſt One o'Clock, the Admiral and *Marlborough* bore down upon and engaged the *Real*, the *Spaniſh* Admiral's Ship, and his Second aſtern; and that the *Marlborough* was diſabled in the ſaid Engagement, having her Main and Mizen Maſts ſhot away, and appeared to be in great Diſtreſs; and that the Captains of the ſaid Ships, ſtationed aſtern of the *Marlborough*, were reſpectively in Sight of the ſaid Engagement, and of the Diſtreſs the *Marlborough* was in; and were capable of yielding her Aſſiſtance, as this Deponent believes; but that the ſaid Captains did not bear down and engage as the Admiral and *Marlborough* did; nor did they go to the Aſſiſtance of the *Marlborough*, but kept to Windward of their Stations, in the Line of Battle, during all, or the greateſt Part of the ſaid Engagement, as this Deponent obſerved.

That, about Four o'Clock, the *Anne Galley* Fireſhip bore down towards the *Real*, in order to burn her, as this Deponent believes; and that ſhe was not covered by any of his Majeſty's Ships; but was blown up, without any Effect; and that the ſaid *Eſſex*, *Rupert*, and *Royal Oak*, or any of them, might have bore down, and covered her, had the Captains of thoſe Ships thought proper ſo to have done; and that the ſaid Ships were at that time not in Action, nor in their Stations in the Line, but were reſpectively to Windward thereof.

John Pope.

Sworn before me, this 20th *Sept.* 1745.

Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Declare

Q. Declare what you know in relation to the *Dorſetſhire?*

A. I ſaw the Four Ships aſtern of the *Marlborough* did not bear down.

Q. Do you know, that one of them was the *Dorſetſhire?*

A. I am pretty poſitive one was:— I believe ſo.

Q. Where was you quartered?

A. Upon the Upper-deck, at the Third Gun.

Q. How many Knots did you go?

A. About a Knot.

Q. Had you Steerage-way?

A. We had bare Steerage-way.

Q. What Sail had you?

A. We were under our Topſails moſt of the Time.

Q. What Diſtance might you be from the *Dorſetſhire?*

A. I believe between Six and Seven Miles.

Q. Did you ſee any of thoſe Four Ships fire?

A. I ſaw moſt of them fire; and the Shot made a Breach in the Water, ſhort of the Enemy.

Q. Did you ſee no Shot go over the *Dorſetſhire?*

A. Yes: After the Fireſhip blew up. I believe I did—She was then nearer than before.

Q. Was ſhe then as near to the *Real*, as the *Marlborough* was?

A. Yes: She appeared to me to be nearer.

Q. Was the *Real* then bearing away?

A. Yes: She was right before the Wind.

Q. Do you think ſhe bore away from the *Dorſetſhire*'s Firing, or for fear of the Fireſhip?

A. I believe, for fear of the Fireſhip.

Q. When the Admiral firſt bore away, Did the Four Ships bear away with him?

A. Not that I obſerved.

Q. Were any of thoſe Four Ships within Point-blank of the Enemy, when engaged?

A. I can't ſay as to Point-blank; but none were near enough to aſſiſt the *Marlborough*, or cover the Fireſhip.

Q. Did you ſee the *Spaniſh* Admiral's Second aſtern engaged?

A. Yes.

Q. With what Ship?

A. With the *Marlborough*.

Q. Did ſhe engage any other Ship?

A. No.

Q. Which Way did the Swell come?

A. From the Weſtward, upon our Lee-Beam:—We had bare Steerage-way, under our Topſails.—Sometimes we lowered our Foreſail, and ſet other Sails, ſo as to keep in our Station.

Q. When the Fireſhip blew up, Did your Sails flap to the Maſts?

A. Yes: They did.

Aſked by the Priſoner,

Q. Did you ſee the *Dorſetſhire* engage the *Real*, before or after the Fireſhip blew up?

A. After: Not before.

Then he withdrew.

Robert Waller, Captain's Clerk of the *Buckingham*, called in, and ſworn.

His Depoſition was read, as follows; *viz.*

Robert Waller, *late Captain's Clerk of his Majeſty's Ship* Buckingham, *maketh Oath*;

THAT he was Captain's Clerk on board the ſaid Ship during the Month of *February*, 1743. in his Majeſty's Fleet in the *Mediterranean*, under the Command of Admiral *Mathews*.

That, on the 11th of ſaid Month of *February*, between Nine and Ten o'Clock in the Forenoon, the Admiral made a Signal for the Line of Battle ahead; and, about Eleven o' Clock, he made a Signal to engage the Enemy.

That Four Ships were ſtationed aſtern of the *Marlborough*, in Admiral *Mathews*'s Diviſion of the ſaid Fleet; but cannot ſay what Ships they were.

That, about Half paſt One o'Clock, the Admiral and *Marlborough* bore down upon and engaged the *Real*, the *Spaniſh* Admiral's Ship, and his Second aſtern; and that the *Marlborough* was diſabled in the ſaid Engagement, having her Main and Mizen Maſts ſhot away, and appeared to be in great Diſtreſs; and that the Captains of the ſaid Four Ships, ſtationed aſtern of the *Marlborough*, were reſpectively in Sight of the ſaid Engagement, and of the Diſtreſs the *Marlborough* was in; and were capable of yielding her Aſſiſtance, as this Deponent believes; but that the ſaid Captains did not bear down equally with the Admiral and *Marlborough*.

That, about Four o'Clock, the *Anne Galley* Fireſhip bore down towards the *Real*, in order to burn her, as this Deponent believes; and that ſhe was not covered by any of his Majeſty's Ships; but was blown up without any Effect; and that the ſaid Ships, ſtationed aſtern of the *Marlborough*, might have bore down, and covered her, for any thing this Deponent knows to the contrary.

Robert Waller.

Sworn this 20th *September*, 1745. before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. You declare in your Depoſition, That the Four Ships to Windward lay at ſuch a Diſtance, that they were of no Aſſiſtance to the *Marlborough* or Fireſhip: Were they ſo far from the Enemy, as not to do Execution?

A. They were to Windward of the *Marlborough*; but whether near enough to the Enemy, to do Execution, I can't ſay.

Q. Did you ſee the *Dorſetſhire* to be one of hoſe Ships?

A. I can't

A. I can't ſay as to any particular Ship, not having then ſeen the Line of Battle.

Q. Did you ſee the Line of Battle afterwards?

A. Yes.

Q. Where was you quartered all the Time of the Engagement?

A. On the Quarter-deck.

Q. Can you ſpeak poſitively, as to the Firing of any particular Ships aſtern of the *Marlborough?*

A. No.

Then he withdrew.

Joſias Fownes, Maſter of the *Oxford*, called in, and ſworn.

His Depoſition read, as follows; *viz.*

Joſias Fownes, *late Maſter of his Majeſty's Ship* Oxford, *maketh Oath*;

THAT he was Maſter on board of ſaid Ship, during the Month of *February*, 1743. in his Majeſty's Fleet in the *Mediterranean*, under the Command in Chief of Admiral *Mathews*.

That, in the Morning on the 11th Day of *February*, a Signal was made for the Line of Battle ahead; and that Captain *Burriſh* commanded his Majeſty's Ship *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, and Captain *Williams* the *Royal Oak*; and were, reſpectively, in Sight of the ſaid Signal, as this Deponent believes.

That the Combined Fleets of *France* and *Spain* were about Three or Four Miles diſtant from the Centre of his Majeſty's Fleet, and in Line of Battle, when the ſaid Signal was made.

That, about Eleven o'Clock, Admiral *Mathews* made the Signal to engage; and, about One of Clock, he Admiral *Mathews* began to engage the *Real*, the *Spaniſh* Admiral's Ship.

His Majeſty's Ships *Namur* and *Marlborough* engaged in Fight with his Majeſty's Enemies; and the *Marlborough* was diſabled by having her Main and Mizen Maſts ſhot away; and was hard preſſed, and in Danger of being taken by the Enemy.

That the Four Ships aſtern of the *Marlborough* might have aſſiſted her, and bore down in their Station; but that they kept to Windward of the Admiral and *Marlborough* during all, or the greateſt Part of the ſaid Engagement.

Jo. Fownes.

Sworn this 16th *September*, 1745. before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. What Diſtance was you from the Admiral, when the Engagement began?

A. I believe, about Two or Three Miles from the *Real*.

Q. Did you ſee the *Dorſetſhire?*

A. I ſaw Four Ships; but I don't know them, becauſe the Line of Battle was not then put up.

Q. Were they ever in a Line of Battle? Were they ever within Point-blank of the Enemy?

A. I believe not, as there was ſo great an Opening between them and the *Real*.

Q. Did you ever ſee them fire?

A. Yes: — But I believe their Shot did not reach.

Q. How far was you from Mr. *Mathews?*

A. About Two or Three Miles.

Q. How far was you from Vice-Admiral *Leſtock?*

A. I can't juſtly tell:—I believe not above a Mile and an Half, or Two Miles.

Q. How far was you then from Admiral *Mathews?*

A. I can't ſay:—It might be about Three or Four Miles, or Four or Five Miles.

Q. Where was your Ship ſtationed?

A. Aſtern of the *Revenge*, and to Windward withal:—We were the ſternmoſt Ship of the whole Fleet.

Q. Did you ſee the *Dorſetſhire* engage?

A. I ſaw the headmoſt Ship of the Four fire, but I can't be particular as to her Name: I don't think ſhe was within point-blank Shot, which I judge to be not quite Half a Mile.

Then he withdrew.

Lieutenant *Baker*, of the *Oxford*, called in, and ſworn.

His Depoſition read, as follows; *viz.*

Charles Baker, *late Lieutenant of his Majeſty's Ship* Oxford, *maketh Oath*;

THAT he was a Lieutenant on board of ſaid Ship, during the Month of *February*, 1743. in his Majeſty's Fleet, in the *Mediterranean*, under the Command in Chief of Admiral *Mathews*.

That, in the Morning of the Eleventh Day of *February*, a Signal was made for the Line of Battle ahead; and that Captain *Burriſh* commanded his Majeſty's Ship *Dorſetſhire*, Captain *Ambroſe* the *Rupert*, and Captain *Williams* the *Royal Oak*; and were, reſpectively, in Sight of ſuch Signal, as this Deponent believes.

That the Combined Fleets of *France* and *Spain* were about Three or Four Miles diſtant from the Centre of his Majeſty's Fleet, and in Line of Battle.

That, about Eleven o'Clock, Admiral *Mathews* made the Signal to engage; and, about One of Clock, Admiral *Mathews* began to engage the Enemy, as did the *Marlborough* and *Norfolk*.

That his Majeſty's Ships *Namur*, *Marlborough*, and *Norfolk*, engaged in Fight with his Majeſty's Enemies; and the *Marlborough* was diſabled by having her Main and Mizen Maſts ſhot away.

That the ſaid Captains *Burriſh*, *Ambroſe*, and *Williams*, might have bore down nearer, and engaged the Enemy in their Stations, and have aſſiſted the *Marlborough*; but they did not; and

they kept to Windward of the Admiral and *Marlborough* during all, or the greateſt Part of the ſaid Engagement.

Cha. Baker.

Sworn before me, this 16th
September, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Relate what you know of the *Dorſetſhire*.

A. I know nothing in particular of her, as I did not know the Names of the Four Ships aſtern of the *Marlborough*; but they did not bear down ſo near as the *Marlborough* did.

Q. Did any of them appear to be within point-blank Shot of the Enemy?

A. I believe not.

Q. Did they never appear to be ſo near the Enemy as the *Namur* and *Marlborough*?

A. No, never.

Q. How far was you from the *Namur*?

A. About Five or Six Miles.

Q. How far was you from the *Dorſetſhire*?

A. About Five Miles.

Q. How far from the *Neptune*?

A. About Two Miles.

Q. How many Knots did you go?

A. I don't know.

Q. Where was you quartered?

A. Upon the Lower-deck.

Q. Did your Sails ſleep, or flap to the Maſts?

A. Yes, they ſlept:—We went better than the Ships of the Line, and had not all our Sails ſet.

Then he withdrew.

John Coultas, Maſter of the *Romney*, called in, and ſworn.

His Depoſition read, as follows; *viz.*

John Coultas, *late Maſter of his Majeſty's Ship* Romney, *maketh Oath*;

THAT he was Maſter on board of the ſaid Ship, during the Month of *February*, 1743. in his Majeſty's Fleet, in the *Mediterranean*, under the Command in Chief of Admiral *Mathews*.

That, in the Morning of the 11th Day of *February*, a Signal was made for the Line of Battle ahead; and that the Four Ships aſtern of the *Marlborough* were within View of ſuch Signal, as this Deponent believes.

That the Combined Fleets of *France* and *Spain* were about Three or Four Miles diſtant from the Centre of his Majeſty's Fleet, and in Line of Battle.

That, about Eleven o'Clock, Admiral *Mathews* made the Signal to engage; and that, about One of Clock, Admiral *Mathews*, the *Marlborough*, and *Norfolk*, began to engage the Enemy.

That his Majeſty's Ships *Namur* and *Marlborough* engaged in Fight with his Majeſty's Enemies; and the *Marlborough* was diſabled by having her Main and Mizen Maſts ſhot away.

That the *Marlborough* was hard preſſed, and in Danger of being taken by the Enemy.

That the Four Ships aſtern of the *Marlborough* might have bore down to the Aſſiſtance of the *Marlborough*, and engaged the Enemy, there being Wind ſufficient, and they being reſpectively to Windward of their Stations in the Line.

John Coultas.

Sworn before me, this 16th
Day of *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Relate what you know of the *Dorſetſhire*.

A. I don't know the particular Ships: There were Four aſtern of the *Marlborough*, which, I think, might have gone to the Aſſiſtance of the *Marlborough*, they being to Windward.

Q. What Diſtance was you from the Admiral?

A. About Five or Six Miles.

Q. By what Ships of the Enemy was the *Marlborough* in Danger of being taken?

A. By the *Real*, and her Second aſtern.

Q. Did you ſee no Ship engage the *Real*'s Second aſtern, but the *Marlborough*?

A. I ſaw thoſe Four Ships aſtern of the *Marlborough* fire; but I don't think their Shot could reach.

Q. What Way had you when the Engagement began?

A. Between One and Two Knots at firſt, but the Wind fell leſs; though I can't tell exactly, for I did not heave the Log.

Q. Where was your Ship ſtationed?

A. Aſtern of the *Buckingham*:—We were appointed to aſſiſt the *Buckingham*.

Then he withdrew.

Lieutenant *Kearney*, of the *Romney*, called in, and ſworn.

His Depoſition was read, as follows; *viz.*

Michael Kearney, *late Lieutenant of his Majeſty's Ship the* Romney, *which was in Vice-Admiral* Leſtock's *Diviſion at the time of the late Engagement in the* Mediterranean, *on the* 11*th of* February, 1743. *between his Majeſty's Fleet, under the Command of Admiral* Mathews, *and the Combined Fleets of* France *and* Spain, *maketh Oath*;

THAT, about Eleven o'Clock in the Morning of the ſaid Day, the Admiral made the Signal to engage the Enemy; and, between Twelve and One o'Clock, he bore down in the *Namur*, together with the *Marlborough*; and attacked the *Real*, the *Spaniſh* Admiral's Ship; and alſo the *Spaniſh* Admiral's Second aſtern.

That his Majeſty's Ship the *Dorſetſhire*, commanded by Captain *George Burriſh*, was ſtationed

tioned the next Ship aſtern of the *Marlborough*; but the ſaid Captain *Burriſh* did not bear down and engage the Enemy, when the Admiral in the *Namur*, and the *Marlborough*, did; but kept with his Majeſty's ſaid Ship to Windward of his Station, and out of Gun-ſhot of the Enemy, during the Whole or the greateſt Part of the ſaid Engagement.

That, about Three o'Clock, the *Marlborough* was diſabled by loſing her Main and Mizen Maſts; and was in great Diſtreſs, and in Danger of being taken or ſunk; and Captain *Burriſh* in the ſaid Ship *Dorſetſhire*, was then to Windward of the ſaid Ship *Marlborough*; but did not go down to her Relief or Aſſiſtance.

That he ſaw the *Anne Galley* Fireſhip bearing down upon the *Real*; and that ſhe paſſed very near his Majeſty's Ship *Dorſetſhire* in her Way to the *Real*; but that ſhe was burnt, or ſunk, without doing any Execution upon the Enemy; and that the ſaid Captain *Burriſh*, with the ſaid Ship *Dorſetſhire*, did not bear down with, and cover and conduct the ſaid Fireſhip, though he was not engaged within Gun-ſhot of the Enemy, but was to the Windward of his Station, and out of the Line.

That the Wind was fair for the ſaid Captain *Burriſh*'s bearing down and engaging in his Station, for his bearing down, and going to the Aſſiſtance and Relief of the *Marlborough*, and to cover the Fireſhip.

That the *Eſſex* was ſtationed next aſtern of the *Dorſetſhire*; but ſhe kept farther to Windward of her Station.

That the *Rupert*, Captain *Ambroſe*, was ſtationed the next Ship aſtern of the *Eſſex*; and ſhe likewiſe kept to Windward of her Station during the greateſt Part of the Engagement: And, notwithſtanding the *Marlborough*'s Diſtreſs, Captain *Ambroſe* did not bear down to her Aſſiſtance; tho' the Two Ships next ahead of him, the *Dorſetſhire* and *Eſſex*, had left their Stations in the Line: Nor did he bear down, and cover the Fireſhip, tho' he was not then engaged with any Enemy; but alſo kept to Windward of his Station, and out of the Line, tho' the Wind was fair for his bearing down, and engaging in his Station, and for his going to the Aſſiſtance and Relief of the *Marlborough*, or for covering the Fireſhip.

That the *Royal Oak*, under the Command of Captain *Edmund Williams*, was ſtationed next aſtern of the *Rupert*; but Captain *Williams* did not bear down to the Aſſiſtance of his Majeſty's Ship *Marlborough*, with his Majeſty's Ship *Royal Oak*; nor did he engage the Enemy in his Station; but kept to Windward of his Station from the Enemy during the greateſt Part of the ſaid Engagement.

Mich. Kearney.

Sworn this 2d *Sept.* 1745.
before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. What Diſtance was you from the *Dorſetſhire*, when the Engagement began?

A. Between Four and Five Miles.

Q. Was the *Dorſetſhire* ever within point-blank Shot of the Enemy?

A. Not till after the Fireſhip blew up.

Q. Where was you quartered?

A. Upon the Lower-Gun-deck.

Q. Did you ſee the Line of Battle before the Engagement began?

A. Yes.

Q. Was you upon the Lower-Gun-deck, all the Time of the Engagement?

A. No.

Q. Was you upon Deck, when the *Marlborough*'s Maſts went?

A. Yes.

Q. Where was the *Dorſetſhire* then?

A. Nigh ahead of us.

Q. How did the *Marlborough* then bear of you?

A. About Two or Three Points upon our Lee-Bow.

Q. How did the *Dorſetſhire* then bear with regard to the *Marlborough*?

A. To Windward of her.

Q. Did you ſee the *Spaniſh* Admiral's Second then?

A. No; I did not obſerve her.

Q. Did you ever obſerve ſhe was diſabled?

A. No; I did not.

Q. Had the *Romney* Steerage-way?

A. Yes.

Q. Did you never ſee the *Dorſetſhire* fire any Shot at the Enemy?

A. I can't ſay.

The Priſoner obſerved, it was pretty extraordinary, that he ſhould ſee the *Dorſetſhire*, and not ſee her Fire.

Q. How many Knots could you have gone then, with all your Sails ſet?

A. About Two.

Q. What Sail had you ſet?

A. Enough, to keep in our Station.

Then he withdrew.

Lieutenant *Leitch*, of the *Nonſuch*, called; but did not appear, being ſick.

The Judge-Advocate then acquainting the Court, That theſe were all the Witneſſes, in Support of the Charge; the Priſoner was told, That if he had any Witneſſes to produce, they might be called in: The Priſoner ſaid, That he was told, the Evidence for the Crown would take up this Day to go through; and therefore he had not given notice to his Witneſſes to attend; but if any of them were in the Way, he deſired they might be called. Being aſked, by the Judge-Advocate, Who he would have called firſt; he told the Court, It was equal to him which were called firſt or laſt; That when he had firſt notice, that he was to be tried, he thought

thought none were ſo proper Evidences for him, as his Officers and People, who were ſo ſtationed upon the Quarter and Upper-decks, as to be able to give the beſt Account of the whole Proceedings, together with One or Two from each of the other Decks; and if any of them were on board, he deſired they might be called. The Court told him, That, if he was not ready, they would adjourn till To-morrow, if he deſired it, to give him Time to get his Witneſſes together: But he replying, That if any of his Witneſſes were in the Way, he'd be glad they might be called in; the Court ordered Inquiry to be made, If any of them were on board. Quickly after which, the Priſoner told the Court, That he found he had not brought his Notes with him, of ſome Queſtions proper for him to aſk; and therefore deſired, they would be pleaſed to adjourn till To-morrow Morning.

The Court then adjourned till To-morrow Morning, Eight of the Clock.

The Fifth Day's TRYAL *of Captain* GEORGE BURRISH,

On Board His MAJESTY'S *Ship the* London, *at* Chatham,

TUESDAY, the Firſt of *October*, 1745.

THE Court met, according to Adjournment; conſiſting of the ſame Members as were preſent Yeſterday.

The Priſoners was brought in by the Marſhal.

The Witneſſes, in Behalf of the Priſoner, were ordered to be called in:—The Judge-Advocate aſked Captain *Burriſh*, Who he would have called firſt: And he anſwered, Lieutenant *Page*.

Lieutenant *Page*, of the *Dorſetſhire*, was called in, and ſworn.

The Court ſeeming doubtful, as this Witneſs was produced by the Priſoner, Whether they, or the Priſoner, ſhould examine him; the Judge-Advocate obſerved, That he did not apprehend, that the Court were to conſider, whether a Witneſs was produced in Support of the Charge, or in Behalf of the Party accuſed; but that, as the Court were to endeavour to come at the whole Truth, he apprehended, they ought to examine every Witneſs that came before them, as far as they ſhould judge neceſſary for that Purpoſe.

The Court aſked,

Q. Relate what you know of your Captain's Behaviour.

A. About Nine o'Clock the Signal was made for the Line of Battle ahead; and the Admiral's Lieutenant called along-ſide of us, and told our Captain, It was the Admiral's Direction to him to cloſe the Line: At Half paſt Ten o'Clock, the Signal was made to engage; and, at a Quarter paſt Twelve, the Red Flag was taken down, and the Signal hoiſted to leave off Chace, being a White Flag at the Foretop-maſt Head: A little while afterwards the White Flag was hauled down, and the Red Flag hoiſted again: Then the Admiral ported his Helm. We were then in the Line, and ported our Helm alſo at the ſame time, and our Starboard-Leech of the Mainſail ſhivered, by bringing the Wind upon our Starboard-Quarter: We continued bearing down, a few Minutes after the Admiral had hauled up, before we ſtarboarded our Helm: The Admiral began to engage the *Real* about One o'Clock; and gave her a Broadſide before the *Marlborough* began: The *Marlborough* ſome time after ran in to Leeward of the Admiral; and we were then in a Line with the Admiral.

Q. What did you do afterwards?

A. It was Six or Seven Minutes before we fired, the Shot then flying over us.

Q. Was you then within point-blank Shot of the Enemy?

A. No:—We were within random Shot.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. When the Captain found, that his Shot could not reach, Did he edge down nearer?

A. Yes: He was edging down all the while.

Q. What Diſtance was you from the Enemy when you began to engage?

A. About Half a Mile.

Q. Was you in a Line with the Admiral, when you began to engage?

A. Yes: He was directly ahead of us.

Q. At what Diſtance?

A. About Half a Mile.

Q. What Ship was abreaſt of the *Dorſetſhire*?

A. The *Hercules*.

Q. Did you continue firing at her?

A. Yes, for ſome time.

Q. How were the Ships ahead of you?

A. I cannot ſay: I believe the *Marlborough* was warmly engaged with the *Real*.

Q. What

Q. What Ships ahead of you were engaged? And with what Ships?

A. The *Marlborough* I am poſitive of; but I am not ſure whether the Admiral was; for the *Marlborough* was then to Leeward of him.

Q. Did not the *Marlborough* engage the *Hercules* at firſt, and the Admiral the *Real?*

A. No: It would have been imprudent in her to do ſo; becauſe the *Hercules* was Half a Mile aſtern of the *Real*, and the *Marlborough* was abreaſt of the *Real.*

Q. How far was the *Hercules* aſtern of the *Real?*

A. About Half a Mile.

Q. What Ship was there abreaſt of the *Real?*

A. The *Marlborough:* The *Namur* was then upon the *Real*'s Bow.

Q. Are you certain whether the *Namur* was then engaged?

A. I can't ſay: She was to Windward of the *Marlborough.*

Q. Where was the *Marlborough* then?

A. Engaging the *Real.*

Q. Are you ſure it was the Ship aſtern of the *Real* you then engaged?

A. Yes: There was but one.

Q. Where was you at Three o'Clock in the Afternoon? And with what Ship engaging?

A. Engaging the *Real.*—After we had engaged the *Hercules* about an Hour, ſhe bore away, and her Colours were down.

Q. What became of the *Hercules?*

A. She Edged away, and then hauled her Wind under the *Real*'s Lee-Quarter.

Q. What was the neareſt you was to the *Hercules?*

A. About Half a Mile.

Q. How long did you engage the *Hercules?*

A. An Hour, or better.

Q. What did you do after that?

A. We Edged away after her; and then, by Orders from the Quarter-deck, we pointed our foremoſt Guns at the *Real*, and our aftermoſt Guns at the *Hercules.*

Q. Was you within Point-blank all the time?

A. I can't ſay.—We were within about Three Cables Length, or near Half a Mile.—Our Metal was lowered a little; which I believe was occaſioned by the Heeling of the Ship.—There was a great Swell, not much Wind, and the Ship rolled a little.

Q. Was you ever within Gun-ſhot all the time?

A. I believe if it had been quite ſmooth Water, the Shot would have ſtruck without lowering the Metal.

Q. What was the Meſſage that was ſent on board from the Admiral?

A. I heard it was to bear down to the Aſſiſtance of the *Marlborough.*

Q. Was you in a Line then with the Admiral?

A. Yes: But the *Marlborough* was a good deal to Leeward of the Line.

Q. What o'Clock was it when you pointed your foremoſt Guns at the *Real*, and your aftermoſt at the *Hercules?*

A. About a Quarter or Half an Hour after Two.

Q. Was you then to Windward or to Leeward of the *Marlborough?*

A. To Windward.—She was about a Point upon our Lee-Bow.

Q. At what Diſtance?

A. About Two Cables Length.

Q. How was the *Real* then?

A. The *Real* was then abreaſt of the *Marlborough*, or rather abaft her Beam.

Q. Where was the *Namur?*

A. After we Edged away, the *Namur* was Two Points upon our Weather-Bow.

Q. Do you remember in any Part of the Action, that you was ſo far ſhot ahead of the *Marlborough* as to open the *Real* ahead of the *Marlborough*, and to fire between the *Namur* and *Marlborough?*

A. When the *Marlborough*'s Maſts were carried away, the *Real* ſhot ahead of her and the *Marlborough* fell broad off: The People called from the Forecaſtle, The *Marlborough*'s Maſts were gone; and we were obliged to ceaſe Firing, becauſe the *Real* ſhot ahead, which brought the *Marlborough* between us and her.

Q. What Meſſage did the Admiral ſend on board?

A. I cannot ſay what the Meſſage was, but I heard it was, To bear down and aſſiſt the *Marlborough.*

Q. Where was you when the Admiral ſent that Meſſage?

A. A ſmall matter to Windward of the *Marlborough*, with our Topſails all aback.

Court. It is pretty extraordinary, if you were ſo near the *Marlborough*, that the Admiral ſhould ſend a Meſſage for you to bear down and aſſiſt the *Marlborough.*

Q. What was you doing then?

A. We lay inactive about Half an Hour.

Q. What was the Reaſon of your lying inactive?

A. To repair the Damages we had received in our Rigging, and to ſtopper and knot the Shrouds.

Q. What became of the *Hercules?*

A. She then bore away to Leeward, and I don't remember to have ſeen her afterwards.

Q. Did the *Dorſetſhire* ever run in between the *Marlborough* and *Real*, during the Engagement, to aſſiſt the *Marlborough?*

A. We were a little to Windward of the *Marlborough*, when we perceived her Maſts were gone: She was then a Point upon our Lee-Bow, but the *Marlborough* then fell broad off, and of courſe we ſhot up and ſhot ahead, and engaged the *Real.*

Q. How near was you then to the *Real?*

A. Within Two Cables Length.

Q. Was that after the *Real* bore away?

A. The *Real* did not bear away till we had fired Three Broadſides at her.—Her Main-yard was down upon the Gunnel, ſo that ſhe could ſcarce wear.

Q. Where was the Fireſhip then?

A. The Fireſhip was not then come down.

Q. Did you ſee the Fireſhip come down?

A. I heard the Captain call to the Fireſhip; and aſked, If ſhe was going down upon the *Real*, and if ſhe wanted any Aſſiſtance.

Q. What Sail did you make, and what Methods did you uſe, to go nearer, upon the Admiral's Meſſage, to bear down to the *Marlborough*'s Aſſiſtance?

A. We immediately ſet our Top-gallant Sails, and bore down.

Q. Was you ſent for by the Captain?

A. Yes, we were ſent for aft by the Captain, who told us, That he had ſent for us, to ſhew us the Poſition of the Enemy's Ships, and of our Ships to Windward: That he had received Orders to bear down, and that, If he ſhould be obliged to haul his Wind, we might be able to juſtify his Conduct.

Q. What Sails had you then ſet?

A. Top-gallant Sails, Topſails, and Foreſail.

Q. How was you then from the *Marlborough?* What did you do?

A. We were at that time upon the *Marlborough*'s Weather-Quarter, and we bore down ahead of her, and engaged the *Real*.

Q. How near did you engage her?

A. Within Two Cables Length.

Q. Could you have gone aſtern of the *Marlborough?*

A. Yes.

Q. Was it beſt to go ahead of her?

A. Yes, it was the beſt Way to go to attack the *Real*.

Q. How was you then from the *Marlborough?*

A. The *Marlborough* was then directly in our Wake, with Boats towing her Head round to Windward;—or ſhe was rather upon our Lee-Quarter.

Q. Where was the *Namur* at that time, when you engaged the *Real?*

A. When we engaged the *Real*, the *Namur* was then Four Points upon our Larboard or Weather-Bow.

Q. Did ſhe fire at the *Real* then?

A. No.

Q. Where was the *Hercules* then?

A. Gone to Leeward a long Way out of random Shot; ſhe was gone, long before the *Real* bore away.

Q. Do you think you was ever within Muſquet-ſhot of either the *Hercules* or *Real?*

A. Muſquets were fired, but I don't know whether their Shot reached.

Q. Was you within Three hundred Yards?

A. No:—When the *Marlborough* was rather to Leeward of our Wake, I believe a Muſket-ſhot would have reached the *Real*.

Q. How near was you at the neareſt?

A. Within Two Cables Length, or rather leſs.

Q. How long was you in that cloſe Engagement?

A. We fired about Three or Four Broadſides, before the *Real* bore away; and when ſhe bore away, we continued firing into her Stern; and, I am ſure, we muſt have raked her Fore and Aft.

Q. Did you bring to, at any time between your receiving the Admiral's Orders to bear down, and your beginning that cloſe Engagement?

A. No.

Q. Did you not bring to at any Part of that time?

A. No:—There was an Alarm that there was no Powder filled.

Q. How came that Alarm?

A. It aroſe from the Men at ſome of the Guns, calling out, That there were no Cartridges filled; upon their not being able to get Powder immediately upon their demanding it.

Q. Was this while you were lying inactive?

A. Yes.

Q. At what Time of the Day was it?

A. About Half an Hour after Three.

Q. How long did this Alarm continue?

A. A Midſhipman came, and ſaid, there was no Powder: I went up directly to Captain *Burriſh*, to acquaint him of the Alarm; and to deſire him to ſend for the Gunner, to know the Truth of it: Upon which the Helm was ſtarboarded, and the Sails ſhook: But this Alarm did not continue for above Four or Five Minutes.

Q. What did the Gunner ſay to the Captain?

A. He ſaid, there was Powder enough filled: And ſo there was, for we never wanted Powder after.

Q. What Damage had you received in your Maſts and Rigging?

A. Five of the Main Shrouds were cut, and the Main-maſt was ſhot through.

Q. Was this before the Admiral's Orders for Bearing down, were received?

A. Yes, I am poſitive it was before thoſe Orders came on board.

Q. How many Hands had you employed in repairing the Rigging?

A. About Ten or Twelve.

Q. Where was you when the Fireſhip blew up?

A. Lying to,—we had brought to, to engage the *Real*, about Two Cables Length from her; and when the Fireſhip blew up, the *Real* was going away before the Wind: We continued firing at her, and raked her Fore and Aft, while ſhe was bearing away.

Q. To what cauſe do you attribute the *Real*'s Bearing away; Whether the *Dorſetſhire*'s Fire, or the Fireſhip's Bearing down?

A. It was owing to the *Dorſetſhire*'s Fire.

Q. Was the Fireſhip to Windward or to Leeward of you, when the *Spaniſh* Admiral bore away?

A. To Windward :—I am poſitive, ſhe was to Windward when the *Real* bore away.

Q. Are you ſure the *Dorſetſhire* drove the *Real* out of the Line?

A. I am ſure of it.

Q. After you had received Orders to bear down and ſuccour the *Marlborough*, did you ſuccour her as an *Engliſh* Man of War ought?

A. Yes.

Q. How long after the *Marlborough*'s Maſts were gone, was it, before you had the Admiral's Meſſage to bear down?

A. About Half an Hour.

Q. What was the Reaſon you did not bear down before?

A. We were repairing our Rigging, and ſecuring our Maſts; our Top-gallant-Backſtay was gone.

Q. Was you repairing the Rigging when you received the Meſſage?

A. Yes.

Q. What Wind had you after that Meſſage?

A. Very little.

Q. On what Side of the Ship, were the Shrouds cut?

A. Three on one Side, and Two on the other.

Q. Did you ſee the Fireſhip bear down?

A. I did; and I heard Captain *Burriſh* hail her.

Q. Did ſhe go ahead or aſtern of the *Marlborough?*

A. She went ahead of her;—for we were then ahead of the *Marlborough*, and ſhe went ahead of us.

Q. Was you within Reach of the *Real* to do Execution, when the Fireſhip paſſed by you?

A. We were not, when the Fireſhip paſſed us; the *Real* having then bore away, and we had left off Firing, becauſe we thought our Guns would not do Execution.

Q. Was it the *Dorſetſhire* made the *Real* bear away?

A. I can't be poſitive as to their Reaſons, but I believe, it was; the *Dorſetſhire* having fired Three Broadſides at her, before ſhe bore away.

Q. Where was the Fireſhip then?

A. She was not then come down; but ſhe was coming down, and was to Windward of us.

Q. Why do you think it was beſt for the *Dorſetſhire* to go ahead of the *Marlborough*, rather than aſtern?

A. Becauſe after the *Marlborough* loſt her Maſts, the Raft ſtopped her Way, and the *Real* ſhot ahead.

Q. Why did you not follow the *Real?*

A. Becauſe, as we were to Leeward of the *Marlborough*, it was thought not prudent, leſt we ſhould be cut off by the Five *Spaniſh* Ships coming up, who might have weathered us.

Q. When did the *Hercules* bear away?

A. She bore away ſome Minutes before the *Marlborough* loſt her Maſts.

Q. Was you ever to Leeward of the *Marlborough?*

A. Yes.

Q. Was you near enough to the *Real* to ſuccour the *Marlborough?*

A. Yes; we were nearer to the *Real* than the *Marlborough* was.

Q. When was you nearer the Enemy than the *Marlborough* was?

A. When we engaged the *Real.*

Q. How near was you to the *Marlborough* at the neareſt Time?

A. At the Time of fixing our Rigging, we were all aback; and then we were not above Half a Cable's Length from the *Marlborough.*

Q. How far was you from the *Marlborough*, when you engaged both the *Hercules* and *Real?*

A. At the Time we engaged the *Real* and *Hercules*, we were about a Cable's Length from the *Marlborough*; and ſhe was then about a Point upon our Lee-Bow.

Q. Where was the *Hercules* then?

A. About Two Cables Length from the *Real.*

Q. What Guns could you bring to bear upon the *Real* or *Hercules?*

A. Our Foremoſt Guns at the *Real*, and our Aftermoſt-Guns at the *Hercules:* The *Real* was about four Points before our Beam.

Q. How near was you then to the *Real?*

A. I believe within Gun-ſhot.

Q. You ſay you was the Occaſion of driving the *Hercules* out of the Line?

A. Yes—The *Hercules* bore away about Half a Cable's Length, and then haul'd up again.

Q. Did ſhe haul up ſo as to be in a Line with the *Spaniſh* Admiral?

A. She was rather to Leeward—Her Main-topſail-yard was fallen down in the Slings, and her Colours fell.

Q. Did the *Hercules* ever ſhoot ſo far ahead, as to bring the *Marlborough* between her and the *Dorſetſhire?*

A. No; never.

Q. What Diſtance of Time was there from your beginning to engage, to the Time of your being within Gun-ſhot of the *Real?*

A. About an Hour and a Quarter; and about Three-quarters of an Hour we engaged both together.

Q. What Diſtance was you from the *Hercules*, when you firſt engaged? Was you within Point-blank?

A. I cannot ſay, whether we were, or not.

Q. If you was at ſo great a Diſtance from the *Hercules*, as you have already ſaid, how could you drive her out of the Line?

A. We were the neareſt Ship to her; and therefore it could be no other Ship.

Q. Did you engage as an *Engliſh* Man of War ought to have done, to ſuccour the *Marlborough* from the *Real* and *Hercules?*

A. I cannot ſay—We muſt be governed by Lines; and we were in a Line with the Admiral.

Q. Was you in a Line with the Admiral when the Meſſage came on board?

A.

A. Yes.

Q. When you lay to, to ſtopper and knot thoſe Shrouds, could you not have bore away?

A. We could not bear away, till we received Orders to go to Leeward of the Line.

Q. Did you ſee any Ships to Leeward of the Admiral, beſides the *Marlborough?*

A. Yes—I believe the *Norfolk* was. For I ſaw a Ship, tho' I can't be poſitive whether it was the *Norfolk*, or not, to Leeward of the Admiral.

Q. What Ship was neareſt to the *Real* when the Fireſhip blew up?

A. The *Dorſetſhire* was, I am very poſitive—When we had brought to, and began to engage the *Real*, the *Marlborough* was then a little to Leeward of our Wake, if any thing; but we were nearer the *Real*, becauſe ſhe was abreaſt of us.

Q. How was the *Namur* from you, when you then engaged the *Real?*

A. When we engaged the *Real*, within Two Cables Lengths, the *Namur* bore about Four Points upon our Weather-Bow, and did not fire at the Enemy, nor the Enemy at her.

Q. When you came to ſuccour the *Marlborough*, how did the Admiral then bear from you?

A. When we were come to, the *Marlborough* was right aſtern of us, and the Admiral about Three Points upon our Weather-Bow.

Court. You are upon your Oath; take care what you ſay.

Q. Did you take notice where the Admiral was, when you were fallen off?

A. About Three or Four Points upon our Weather-Bow.

Q. How was the Admiral when he ſent the Meſſage to you, to bear down?

A. About a Point or two upon our Weather-Bow—I am very poſitive of it.

Q. When you was ahead of the *Marlborough*, was the *Hercules* then bore away?

A. Yes, before—She bore away Three-quarters of an Hour, or better than Half an Hour, before the *Real* did.

Q. When you brought up to engage the *Real*, what Time was it?

A. Between Three and Four o'Clock.

Q. What Diſtance was you then from the *Real?*

A. About Two Cables Length.

Q. Did you engage her with your Small-Arms?

A. I can't ſay, whether we fired our Small-Arms, or not.

Q. What Part of the Ship was you then in?

A. Upon the Upper-deck.

Q. After your firſt Bearing down with the Admiral, did you bring to with the Admiral upon your Weather or Lee-Bow?

A. The Admiral was right ahead.

Q. Was you in the Line, when the Admiral firſt began to engage?

A. Yes, directly.

Q. Then what occaſioned the Admiral's Meſſage?

A. I believe, our being to Windward of the *Marlborough*, and lying inactive, was the Occaſion of it.

Q. What was the Meſſage ſent you in the Morning?

A. It was to cloſe the Line ahead?

Q. Was you in the Line then?

A. Yes.

Q. How was you when the Admiral began to engage? Was you then in the Line?

A. Yes.

Q. What Ship firſt began to engage the *Hercules?*

A. We did.

Q. How came the *Marlborough* to engage the *Real?*

A. She run in between the Admiral and *Real.*

Q. Then how long was the Admiral engaged with the *Real*, before the *Marlborough* ran in between him and the *Real?*

A. But a ſhort Time; I can't ſay exactly how many Broadſides he fired, but not above Two or Three.

Q. What Ship engaged the *Hercules?*

A. The *Dorſetſhire.*

Q. Did you engage her as cloſely as the *Marlborough* did the *Real?*

A. No.

Q. How long was it after the *Marlborough* engaged the *Real*, before you engaged the *Hercules?*

A. About Six or Seven Minutes. The *Hercules* was not come up, when the Admiral began to engage.

Q. If the *Namur* engaged the *Real*, and there was only the *Hercules* aſtern of her, How came the *Dorſetſhire* to engage the *Hercules*, and the *Marlborough* not to engage her?

A. The *Hercules* was Half a Mile aſtern of the *Real*; and it was ſeveral Minutes before ſhe could come up, to engage the *Dorſetſhire*; and in the mean time the *Marlborough* ſhot ahead up to the *Real*, and engaged her.

Q. How many Men had you killed, or wounded?

A. Five or Six killed, and Nineteen wounded.

Q. Were any of them killed by Small-ſhot?

A. I cannot tell.

Q. Did the Shot you receiv'd from the Enemy go through and through?

A. I can't ſay—I took up a Bar, or Double-headed Shot, which came through the Side between the Ninth and Tenth Gun, and hit the Hoop of the Mizen-Maſt.

Q. Was that at the firſt of the Action?

A. Yes, it was at the firſt of the Action, when we began to engage the *Hercules.*

Q. Did

Q. Did you obſerve any Pound-ſhot to be lodged in any Part of the Ship?

A. Yes: One was buried Five or Six Inches in the Quarter-Gallery.

Q. Did the double-headed Shot come thro' the Side, or in at a Port?

A. It came thro' the Side, drove in a large Splinter, which wounded a Butcher.

Q. Was that upon the Upper-deck?

A. Yes; under the Quarter-deck, between the Nine and Tenth Gun.

Q. Did that Shot which came thro', make a Dent on the other Side?

A. I cannot ſay.

Q. When did the Grape-ſhot ſtrike you, that went Four or Five Inches deep?

A. After engaging the *Real* cloſely.

Q. Upon the Whole, After receiving the Admiral's Orders to bear down, did you make the beſt of your Way?

A. Yes.

Q. After receiving the Admiral's Meſſage, how long time was there between your Luffing up, upon account of the Rumour of no Powder being filled, and your Bearing away again?

A. About Four or Five Minutes.

Q. During the whole Time of Action, did you ſee any Confuſion, or Signs of Fear, in Captain *Burriſh?*

A. No:—He was upon the Quarter-deck, and ſtood upon the Arm-cheſt moſt of the Time; ſeemed quite Maſter of himſelf, and gave Orders with great Coolneſs and Preſence of Mind.

Q. Was the Captain ſuſpended, diſplaced, or removed from his Command, by the Admiral, for Miſbehaviour in the Action?

A. No; never.

Q. When you lay to, to repair your Rigging, was you then within Gun-ſhot of the Enemy?

A. Yes.

Q. How was the *Marlborough* from you then?

A. In our Wake.

The Court then aſked the Priſoner, If he had any Queſtions to ask this Witneſs.

Priſoner. The Boatſwain of the Fireſhip ſwore, That they hailed the *Dorſetſhire*; and that, in anſwer thereto, they were told from the *Dorſetſhire*, That we had no Powder filled.

Court. You are not to tell the Witneſs the Evidence given by any other Witneſs; but you may aſk him what Queſtions you think proper.

Asked by the Priſoner,

Q. Did you ever hear any Perſon from the Fireſhip hail the *Dorſetſhire?*

A. No: I heard you hail the Fireſhip, to know if they wanted any Aſſiſtance; but I did not hear any Anſwer; and, immediately upon the Fireſhip's Bearing away to the *Real*, a Barge was ſent, to aſſiſt in bringing off her Men.

Q. Do you remember what I ſaid to the Captain of the Fireſhip?

A. You deſired to know, if we could be of any Service to him.

Q. What Reply did he make?

A. I cannot ſay; I did not hear any.

Q. How did the Fireſhip go down?

A. The Fireſhip came down upon our Bow; then made a Sweep round, towards the *Marlborough*; and then turned ſhort off to the *Real*'s Larboard-Quarter.

Q. Where was you then?

A. Upon Deck.

Q. Was the Boat hoiſted out to go to the Fireſhip?

A. No; it was hoiſted out, in order to go to the Aſſiſtance of the *Marlborough*; but was ſent after the Fireſhip, upon ſeeing her bear down.

Q. When the Fireſhip appeared to be going down towards the *Real*, do you think that the *Dorſetſhire* could have bore down in time, to have covered and aſſiſted her?

A. I think not:—The *Dorſetſhire* was then lying to, under her Topſails; and, as the Fireſhip blew up ſoon afterwards, I don't think we could have made Sail, and bore down time enough to have covered her.

Court asked,

Q. If you had told them in the Fireſhip, That you would have bore down to cover her, do you think they would not have ſlackened Sail?

A. I cannot ſay.

Q. Could the *Dorſetſhire* have bore down, at firſt, to cover the Fireſhip?

A. Yes.

Q. Did you obſerve the Signal for the Fireſhip to bear down?

A. I ſaw it out Two Hours.

Q. What for?

A. To attack the *Real*.

Q. How did ſhe come down?

A. Upon our Bow; and then made a Sweep towards the *Marlborough*.

Q. If the *Dorſetſhire* had made Sail when the Fireſhip took that Sweep, could the *Dorſetſhire* then have bore down with the Fireſhip?

A. I don't apprehend, that we ought, as we had attacked the *Real*, and ſhe had bore away.

Priſoner asked,

Q. Do you remember the Foreſpring Stay being ſhot, while engaged at firſt with the *Hercules?*

A. Yes; and I alſo remember Five of the Main-ſhrouds being ſhot.

Q. While we were inactive, were they not fixing that Spring-ſtay?

A. Yes.

Q. Did you obſerve the Topſail, or other Sails, to be ſhot during the Engagement?

A. Yes; I ſaw a great many Shot-holes in the Sails, before the *Marlborough*'s Maſts were gone.

Q. How many Shot-holes were there in the Topſail?

A. Enough to render it unſerviceable.

Q. Was it old?

A. It was bent juſt before.

Court asked,

Q. Was your Jib-boom ſhot away?

A. No.

Q. Could you have hoiſted your Jib, upon Occaſion?

A. Yes.

Q. Did you hoiſt your Jib?

A. Yes; when the Admiral bore down athwart our Bow.

Q. Was your Metal lowered the moſt of the Time?

A. Yes; the whole Time we engaged: It was lowered at firſt, and not afterwards elevated.

Q. What Part of the Enemy's Ship did you aim at?

A. At the Hull.

Q. Were your Larboard-Guns run out?

A. Only the Middle and Lower-deckers.

Q. Did the Enemy's Ships keep their Ports open?

A. Yes.

Q. Were your Ports hauled up to Windward?

A. I cannot ſay: I was quartered upon the Upper-Gun-deck, and obſerved only that.

Q. Did you hear there was a great Quantity of Water pumped from the Ship?

A. Yes; I heard the Pump go.

Q. How were your Guns lowered?

A. The Bed was in its Place, and the Quoin taken out.

Q. Did you make Water from the Shot-holes you received?

A. I don't know, not being on the Lower Gun-deck?

Then he withdrew.

Lieutenant *Davids*, of the *Dorſetſhire*, was called in, and ſworn.

Q. Relate what you know of Captain *Burriſh*'s Behaviour?

A. I was quartered on the Lower Gun-deck, and ſaw but little of it.

Q. When did the Engagement firſt begin?

A. About One o'Clock.

Q. How did you go down before that?

A. We went down abreaſt of the *Marlborough*, and as much in a Line abreaſt as ever I ſaw any Ship.

Q. Was you in a Line with the *Namur*, when you hauled up?

A. I believe we were; for I could ſee no Ship ahead, or to Leeward.

Q. What Diſtance was you from the Enemy, when you began to engage?

A. About Half a Mile.

Q. What Ship did you engage?

A. We engaged the Ship aſtern of the *Real*, which, I believe, was called the *Hercules*.

Q. Was you near enough to do Execution?

A. I believe ſo; for their Shot did Execution on board the *Dorſetſhire*.

Q. Did their Shot go thro' your Sides?

A. None, at firſt.

Q. How many Men had you killed or wounded upon your Deck?

A. I can't ſay; I believe Three or Four, about the Middle of the Action.

Q. How long was it from your firſt beginning to engage, before you bore away nearer?

A. We did not bear away at all, to engage that Ship nearer: She ſhot ahead; and ſhe went away from us about Three o'Clock.

Q. What Ship did you engage afterwards?

A. The *Real*.

Q. When did you begin to engage the *Real*?

A. About an Hour after we began to engage the Firſt.

Q. Did the *Hercules* haul up again?

A. Yes.

Q. What Damage had ſhe received?

A. She had loſt her Main-topſail Yard, and her Colours were ſhot down.

Q. What Meſſage did the Admiral ſend?

A. I don't know.

Q. What time did the *Marlborough*'s Maſts go away?

A. About Three o'Clock.

Q. What Diſtance was you then from the *Hercules*?

A. She was then got out of Sight: I ſaw none but the *Marlborough*.

Q. What Ship, do you believe, forced the *Hercules* to bear away, and did her the Damage ſhe received?

A. The *Dorſetſhire*; there was no other Ship near enough.

Q. Was you within Point-blank when you firſt engaged?

A. I don't know what Point-blank is: We were within about Half a Mile.

Q. Was you as near the Enemy as the *Marlborough* was?

A. I can't ſay whether we were or no.

Q. Was you as near as the *Namur*?

A. I can't ſay where the *Namur* was; I was at my Quarters.

Q. Was you abreaſt of the *Hercules*?

A. Yes.

Q. Could you ſee the *Marlborough* out of your Lee-Ports after ſhe loſt her Maſts?

A. Yes.

Q. Had you your Weather-Ports hauled up on the Lower-Gun-deck?

A. Yes.

Q. Did you take any Water in?

A. Yes, to Leeward.

Q. Could you always keep your Ports open to Windward?

A. No, not always.

Q. How much did you lower the Metal?

A. We took the Quoin out about Half-way.

Q. Did your Ship heel much?

A. She heel'd a little at times with the Rolling.

Q. Did

Q. Did you ſee the Fireſhip when ſhe blew up?

A. I ſaw her about Half a Minute before.

Q. What Diſtance was ſhe from you then?

A. About Two Cables Length and an Half.

Q. Was ſhe in a direct Line between you and the Enemy?

A. Yes, near it; — rather before our Beam.

Q. How did you bear then with reſpect to the *Marlborough?*

A. The *Marlborough* was upon our Weather-Quarter.

Q. How far was you then from the *Real?*

A. About Half a Mile.

Q. Was any of our Ships nearer to her?

A. No.

Q. Where was the *Hercules* when the Fireſhip blew up?

A. I know nothing of the *Hercules*; I did not ſee her then.

Q. Did you ſee the Five Sail of the *Spaniſh* Ships that were coming up?

A. Yes.

Q. Did any of them fire at the Fireſhip?

A. Yes, the headmoſt; but her Shot did not reach.

Q. Did you engage that headmoſt?

A. No, not till afterwards, juſt before we had wore.

Q. Had the *Real* bore away then?

A. No, not before the Fireſhip blew up.

Q. Did you engage her before the Fireſhip blew up?

A. Yes.

Q. Did any of the Ships aſtern of you engage the Five Ships that were coming up?

A. No, not that I ſaw.

Q. What Diſtance was you from the *Real?*

A. About Half a Mile; I can't ſay, but we might have been nearer afterwards.

Q. Was you never cloſely engaged with the *Real?*

A. Yes, within Two Cables Length and an Half, or thereabouts.

Q. What was the neareſt Diſtance that you engaged the *Hercules?*

A. About Half a Mile.

Q. Was you never nearer the Enemy?

A. Not till after the *Real* bore away; then we were nearer.

Q. What Ships did you engage, after you wore?

A. The Five Sail that were coming up: We engaged ſome of them before.

Q. When you ſaw the Fireſhip, juſt before ſhe blew up, where was the *Spaniſh* Admiral then?

A. Rather before our Beam.

Q. Where was the *Marlborough* then?

A. Upon our Weather-Quarter.

Q. Was the *Dorſetſhire* ever between the *Marlborough* and the Enemy?

A. After ſhe towed away, we were to Leeward of her:— She was upon our Weather-Quarter, towing to Windward.

Q. What time was that?

A. Between Three and Four o'Clock.

Q. Was you ever nearer the Enemy than the *Marlborough* was, ſo as to be able to give Aſſiſtance to the *Marlborough?*

A. We were nearer to the Enemy than the *Marlborough*, who was upon our Weather-Quarter.

Q. When the *Marlborough* got to Windward of you, how near was you to the *Real?*

A. Nearer than Half a Mile:— About Two Cables Length.

Q. So that, whenever you ſpeak of the Diſtance of Half a Mile, you mean with regard to the *Hercules?*

A. Yes.

Q. How near was you to the *Hercules?*

A. Never nearer than Half a Mile.

Q. How near was you to the *Real*, when you bore down to her?

A. About Two Cables Length, or leſs.

Q. When the Fireſhip blew up, how far was you from the *Real?*

A. About Two Cables Length and an Half, or Half a Mile.

Q. Did your Captain engage the Enemy ſo cloſe as he could have done, or as near as an *Engliſh* Man of War ought to have engaged?

A. I think he muſt obey Inſtructions.

Q. Was you in your Station?

A. Yes, I believe we were in a Line with the Admiral.

Q. Are you ſure your Ship was in a Line with the Admiral?

A. I can't ſay where the Admiral was; but, though I looked through the Lee-Ports, I could not ſee any Ship to Leeward.

Q. Do you think you could have engaged the *Hercules* nearer than you did?

A. As we were to Windward, we could have gone nearer; but, I apprehend, we were then in the Line.

Q. Did you obſerve when the *Namur* and *Marlborough* firſt began to engage?

A. I heard the Guns, but did not ſee them.

Q. What was you doing, when the *Marlborough*'s Maſts went away?

A. Engaging the *Hercules*, the Ship aſtern of the *Real.*

Q. The Ship you firſt engaged was the *Hercules?*

A. Yes.

Q. What was the firſt Ship the *Marlborough* engaged?

A. The *Real*; the *Hercules* was too far aſtern for her to engage.

Q. Did you ſee the *Hercules* bear away out of the Line?

A. Yes, I ſaw her go ahead, out of Sight, to Leeward of the *Real*; and I ſaw nothing of her afterwards.

Q. Was the *Real* bore away when you engaged her?

A. No;

A. No: She did not bear away, till a Quarter of an Hour after we engaged her.

Q. How came the *Dorſetſhire* ahead of the *Marlborough*?

A. Becauſe, when the *Marlborough*'s Maſts were gone, ſhe fell off.

Q. How near did you go to the *Marlborough* in paſſing ahead of her?

A. I believe, within about One hundred Yards:—She went under our Stern, when ſhe was towed off.

Q. What Diſtance was you then from the *Real*?

A. About Half a Mile.

Q. What was you doing while the Ship lay inactive, after the *Marlborough*'s Maſts were gone?

A. Pumping the Water out of the Ship.

Q. Were the Enemy ſo complaiſant, as to lie inactive while you did?

A. Yes.

Q. At what Diſtance was you then from the Enemy?

A. About Half a Mile.

Q. Did you ever engage the *Real* within Muſquet-ſhot?

A. Yes: I believe we did; we might be about as far off as a Muſquet could throw a Ball.

Q. At what time was that?

A. About a Quarter before Four:—A little before ſhe bore away.

Q. While you was lying ſtill, repairing your Rigging, and pumping your Ship, at about Half a Mile Diſtance; were the Enemy then firing?

A. No:—I did not ſee them fire.

Q. What was the Reaſon they did not?

A. I can't tell, whether there might not be a Confuſion on board.

Q. How long was it after the Fireſhip blew up, before the *Spaniſh* Admiral bore away?

A. He bore away before.

Q. Did the *Real* bear away from your Fire, or from the Apprehenſions of the Fireſhip?

A. I think from our Fire.

Q. Was the Fireſhip blown up, before the *Marlborough* towed under your Stern?

A. No.

Then he withdrew.

Lieutenant *Griffith*, of the *Dorſetſhire*, was called in, and ſworn.

Q. Where was you quartered?

A. On the middle Gun-deck.

Q. Relate what you know, in relation to Captain *Burriſh*'s Conduct.

A. When the Signal for the Line a Battle ahead was made in the Morning.

Q. What time was that?

A. About Ten o'Clock.—About One o' Clock, the Admiral put his Helm aweather, and the *Marlborough* alſo; and I heard ſome of our People ſay, that the Admiral and *Marlborough* talked together. When I went down to my Quarters, we were about a Cable and Half diſtant from the *Marlborough*, not quite abreaſt, but rather upon her Starboard-Quarter. When I got down to my Quarters, I heard Firing, as I apprehended, from the Admiral; and in about Six or Seven Minutes afterwards we began to fire.

Q. What Diſtance was you from the Enemy, when you began to fire?

A. About Half a Mile.

Q. What Ship did you engage?

A. The *Hercules*, the Ship aſtern of the *Real*; and after we had engaged her about an Hour, I ſaw her Main Topſail Yard down, and her Colours alſo down; upon which ſome of our People ſaid, She had ſtruck; but ſhe bore away a little before the Wind; then luffed up again, and went nearer the *Real*.

Q. What Ship did you engage then?

A. Then we kept engaging her; and Captain *Burriſh* ſent Orders to point the Foremoſt Guns at the *Real*, and the Aftermoſt at the *Hercules*.

Q. What Diſtance was you then from the Enemy?

A. About Half a Mile.

Q. How far was you from them at the Beginning?

A. About the ſame Diſtance.

Q. What did you do then?

A. We kept engaging the *Real* from our Foremoſt Guns, and the *Hercules* from the Aftermoſt, till the *Marlborough* dropt in between; and preſently afterwards the *Hercules* was out of Sight, and I ſaw no more of her.

Q. Did the *Marlborough* interrupt your Sight?

A. Yes.

Q. What did you do then?

A. We lay inactive about Half an Hour; then Captain *Burriſh* ſent for the Lieutenants upon Deck, and told us, He had received Orders from the Admiral to go down to engage the *Real*, and ſuccour the *Marlborough*. I ſaid, To be ſure. He anſwered, You ſee I am going down (as we were, with our Foreſail, Topſails, and Top-gallant Sails): And then he ſhewed us the Situation of our Ships to Windward, and alſo of the Enemy, who were coming up; who, I think, would have weathered us, if we had lain to. I then went down to my Quarters; and preſently afterwards we engaged the *Real*, for better than a Quarter of an Hour, within the Diſtance of about a Cable and an Half.

Q. Was the Fireſhip blown up, before you bore away?

A. I did not ſee her then.

Q. What did you do after that?

A. Then ſhe put before it, and we kept firing into her Stern, as long as our Guns would reach, till Captain *Burriſh* ſent Word not to fire any more.—One of the Mates came

and aſked, Why we left off Firing, and deſired to fire Two more Guns by the Entering-Port: Which he did; and the Shot fell juſt under her Quarter.

Q. Relate what you know concerning the Fireſhip.

A. As to the Fireſhip, I did not ſee her till ſhe was to Leeward of us.—She took a Sweep, came down upon our Starboard-Quarter, and then put her Helm aſtarboard, a little to Leeward of us, and went away for the *Real*.

Q. Did you bear down, and engage the *Real*, before the Fireſhip came down?

A. Yes; for about a Quarter of an Hour before the Fireſhip came down.

Q. How near?

A. Within a Cable's Length and an Half.

Q. Did you ſee the Fireſhip blow up?

A. Yes.

Q. Was the *Real* before the Wind, when the Fireſhip bore down?

A. I believe ſhe was; but I did not ſee the Fireſhip, till ſhe came cloſe to the *Dorſetſhire*.

Q. What Shot were your Guns on the Middle-Gun-deck loaded with?

A. With round Shot.

Q. Was there not Grape-ſhot fired?

A. None, at firſt; but afterwards, I believe, there was.

Q. Did you hear of your hailing the Fireſhip?

A. Yes; we hoiſted our Boat out then.

Q. At the time the *Dorſetſhire* hailed the Fireſhip, Was ſhe inactive?

A. Yes.

Q. Did not the Fireſhip hail you?

A. I did not hear her.

Q. What Poſition was the *Real* in, when the Fireſhip paſſed you?

A. I don't know: She was bore away.

Q. Had you left off Firing, when the Fireſhip paſſed you?

A. Yes; we had left off Firing at the *Real* before that.

Q. Was the *Real* drove away before the Wind, before the Fireſhip bore down?

A. Yes; and we were lying inactive, when the Fireſhip paſſed by us.

Q. How long was it between the Fireſhip's hailing you, and her blowing up?

A. I did not ſee her blow up: I only ſaw the Smoke.

Q. What Diſtance was the Fireſhip from you, when you ſaw the Smoke?

A. About Half a Mile.

Q. What Diſtance of Time was there from the Fireſhip's paſſing under your Stern, till ſhe got near the *Real*?

A. About Half an Hour, or an Hour.

Q. Did you feel the Shock of the Fireſhip?

A. No.

Q. When you left off Firing, Was you near the *Real*?

A. No: She had bore away.

Q. What Ship was the Fireſhip neareſt to, when ſhe blew up; the *Marlborough*, or *Dorſetſhire*?

A. The *Dorſetſhire*, to be ſure:—I think the *Marlborough* muſt then have been on our Larboard-Quarter.

Q. Do you think the Fireſhip, or your Fire, was the Occaſion of the *Real*'s bearing away?

A. Our Fire.

Q. Did the *Dorſetſhire* afford proper Aſſiſtance to the *Marlborough* after her Maſts were gone?

A. I believe her Bearing down prevented the Five *Spaniſh* Ships aſtern from weathering her.

Q. Why did you not purſue the *Real*?

A. If we had, the Five Ships that were coming up would have weathered us.

Q. Was it the *Marlborough*'s falling between the *Dorſetſhire* and *Hercules* occaſioned your Fire to ceaſe?

A. Yes.

Q. Did the *Marlborough* fire at the *Hercules* then?

A. I can't tell.

Q. What became of the *Hercules*?

A. I did not ſee her after the *Marlborough* dropt between us.—The *Hercules* ſeemed to me to go ahead, and to Leeward withal.

Q. What Wind had you, when the *Real* bore away?

A. Not much; but a great Swell.

Q. How much could your Ship run then before the Wind?

A. I believe, about Three Knots; but I can't be particular.

Q. How much could the *Real* go, when ſhe bore away?

A. I believe ſhe might go about a Knot.

Q. When you obſerved the *Spaniſh* Admiral had bore away, What Damage had he received?

A. I think his Main Yard was down.

Q. Did you obſerve him haul up again, after the Fireſhip blew up?

A. I did not obſerve it.

Q. Did you obſerve him to bear away after the Smoke was gone?

A. When we left off firing at him, he was before the Wind; and I ſaw him bearing away, after the Fireſhip blew up; but I had not my Eye always upon that Ship.

Q. What Ship did the Shot come from, that ſunk the Fireſhip?

A. I can't tell what was the Occaſion of her Sinking.—The Shot of the Five Sail that were coming up could not reach her.

Q. Did you ſee thoſe Five Sail fire?

A. No.

Q. How long was it after the *Marlborough* loſt her Maſts, that the *Real* bore away?

A. About an Hour: For we lay inactive Half an Hour; and then the Time of Bearing away, and Engaging, muſt have made up an Hour.

Q. How long did you then engage the *Real* cloſely?

A. About a Quarter of an Hour.

Q. At what Diſtance?

A. Within a Cable's Length and an Half.

Q. What was the Occaſion of your lying inactive that Half-hour?

A. The *Marlborough* falling in between us and the Enemy: And I was alſo told, that we were repairing our Rigging.

Q. What Endeavours did you uſe to get clear?

A. I don't know: I was at my Quarters.

Q. Did you pump your Ship in that Half-hour?

A. Yes.

Q. Did you hear ſay what Water there was?

A. Yes; I heard there was about Five Foot.

Q. What was it occaſioned by?

A. I believe it came in at the Ports.

Q. Did you hear any thing of a Want of Powder?

A. No; I heard nothing at all of it till the next Day.

Then he withdrew.

Lieutenant *Smelt*, of the *Dorſetſhire*, called in, and ſworn.

Q. Where was you quartered?

A. Upon the Lower-Gun-deck, from the Main Maſt forwards.

Q. Relate what you know of Captain *Burriſh*'s Behaviour.

A. I can't recollect any Particulars before putting the Helm aweather:—But when the Admiral and *Marlborough* bore down, we bore down with them:—I was at that time upon the Main Chains, or thereabouts; and was then ordered down to my Quarters: After I was down at my Quarters, and the Ship brought to, Orders were given to fire; which we did, upon the Ship aſtern of the *Real*; and we continued firing at her till her Main-topſail Yard came down upon the Cap, and then ſhe edged away from us: When I ſaw that, I thought the Guns to which I was quartered, could be better brought to bear upon the *Real* than the *Hercules*; and therefore pointed them forward, and continued firing at the *Real*, till the *Marlborough*'s Maſts were ſhot away: Then the *Marlborough* dropt aſtern, and we, ſhooting ahead, brought her between us and the Enemy; which obliged us to ceaſe Firing: I then went aft, and pointed as many of my Guns as I could at the *Hercules*, till the *Marlborough* dropping more aſtern, obliged us to ceaſe Firing at her alſo: We then ſhot ahead of the *Marlborough*, and edged down withal, and renewed our Fire at the *Real* as ſoon as we were clear of the *Marlborough*; which we continued, till the Fireſhip came down; and then Orders were ſent to ceaſe Firing, till the Fireſhip was paſſed.

Q. What Diſtance was you from the *Hercules*, when you firſt began to engage her?

A. I can't recollect:—I believe, about Three-quarters of a Mile, the laſt time I ſaw her, before we began to engage.

Q. How long before?

A. Juſt before we began.

Q. Was you in a Line with the *Namur*, when you brought to; or did you never ſee her to Leeward during the Engagement?

A. I never ſaw her to Leeward; I did not lean out of the Ports to look; and therefore did not obſerve particularly.

Q. Before the Fireſhip came down, at what Diſtance did you engage the *Real*?

A. I believe, within about Three Cables Length.

Q. When the Fireſhip hailed you, what Diſtance was you then from the *Real*?

A. I believe, within that Diſtance.

Q. When the Captain ſent for you on the Quarter-deck, did you obſerve the Poſition of the *Namur*?

A. I do not remember to have ſeen her.

Q. Did you obſerve the *Marlborough* then?

A. Yes; I think ſhe was aſtern.

Q. When you came upon the Quarter-deck, did you obſerve the Poſition of the Ships ahead of you?

A. I obſerved the Ships, the Captain pointed at, to Windward, and aſtern; but I did not obſerve the Admiral, or the Ships ahead.

Q. What o'Clock was it, when you bore down the Second time to engage?

A. I can't tell.

Q. How long was it between your Firſt Engaging and Bearing away?

A. I can't ſay: I was buſy all the Time.

Q. After you came ſo near to the *Real* as to engage her, How long did you engage her?

A. I can't ſay exactly; it was a ſhort time.

Q. Do you think you was within Point-blank?

A. I can't ſay.

Q. Was you ever within Point-blank?

A. I believe, at the neareſt, we were within Three Cables Length.

Q. Was you ever within Muſquet-ſhot?

A. I believe not.

Q. Was you lying to, or under Sail, when you then engaged the *Real*?

A. Being upon the Lower-deck, I can't tell.

Q. How long was you ſo cloſely engaged with the *Real*?

A. A very little while before ſhe bore away before the Wind.

Q. Did ſhe bear away from your Fire?

A. I thought ſo.

Q. Was it before or after the Fireſhip blew up, that you was ſo cloſely engaged?

A. Before.

Q. When you were engaged with the *Hercules*, Was you ſo near as to do good Execution?

A. I think we were; becauſe the Shot flew

over

over us, ſtruck us, and killed ſome of our Men.

Q. Did the *Hercules* bear away to Leeward, ſoon after you engaged her?

A. Yes.

Q. Do you apprehend it was your Fire forced her to bear away to Leeward?

A. Yes, I apprehend it was.

Q. What Diſtance was you from her, when ſhe bore away?

A. Within Three-quarters of a Mile.

Q. Did you obſerve the *Hercules* to have received any Damage, when ſhe bore away?

A. I obſerved her Maintopſail Yard down upon the Cap.

Q. When the *Marlborough* loſt her Maſts, Do you remember to have ſeen her?

A. Yes, juſt after, out of our Lee-Ports forward.

Q. How did ſhe then bear from you?

A. About Two Points on our Lee-Bow; and, as we ſhot ahead, we brought her farther aft.

Q. What was the Reaſon of your being ahead of the *Marlborough?*

A. Our Topſails were full; and the *Marlborough*'s Maſts were gone.

Q. Did you think it better to go ahead of the *Marlborough*, to engage the *Real*, than to go aſtern?

A. I think, if Circumſtances had ſuited, it would have been beſt to have gone aſtern.

Q. Where was the *Hercules*, when you ſaw the *Marlborough?*

A. Under the *Real*'s Quarter.

Q. Do you think the *Dorſetſhire* had room enough to wear, and to go under the *Marlborough*'s Stern, at that time?

A. Yes; I think ſhe might.

Q. How near did you paſs to the *Marlborough*, when you ſhot ahead of her?

A. Very near; ſo near, that we could have ſpoke to one another, without a Trumpet.

Q. Do you know what came of the *Hercules?*

A. No, I don't.

Q. Do you remember to have ſeen the *Namur* and *Marlborough* engaged with the *Real?*

A. I don't remember to have ſeen the *Namur* at all, till after her Wearing.

Q. Was your Ship pumped?

A. Yes.

Q. Did you ſee the Fireſhip go paſt you?

A. Yes: We ceaſed Firing, for fear of damaging her.

Q. Did the Fireſhip paſs ahead or aſtern of you?

A. She came down upon our Bow, ranged along the Side, and then bore down.

Q. Did you engage the *Real* after the Fireſhip blew up?

A. I don't recollect, that we did.

Q. Was your Metal lowered during the Engagement?

A. Yes; ſometimes more, ſometimes leſs, according to the Swell:—The Quoins were ſometimes out, to bring the Guns to bear, according to the Motion of the Ship.

Q. What Shot were your Guns loaded with?

A. Round Shot.

Q. Do you remember to have engaged the *Real*, after the Fireſhip blew up?

A. No: The *Real* went away large, or right before it, before the Fireſhip blew up.

Q. Did the *Real* put before it, upon your Firing, or upon the Fireſhip's Bearing down?

A. I don't know; but I have the greateſt Reaſon to believe, it was from our Fire:—I can't ſay whether they ſaw the Fireſhip.

Q. Did you hear any Complaint of Want of Powder?

A. No.

Q. Did you hear of a Grape-ſhot that ſtruck the Ship's Side?

A. Yes; I ſaw the Place it ſtruck.

Q. Do you think, had you loaded your Guns with Grape-ſhot, that they would have done Execution?

A. I don't think they would; otherwiſe I ſhould have loaded them ſo.

Q. Do you remember any thing about Trucks or Beechings at the time you lay inactive?

A. Yes; I fitted ſome Trucks myſelf.

Q. Did not you take in ſo much Water, that you pumped it out with as much Secrecy as poſſible, that the People on the other Decks might not be diſpirited?

A. Yes, I did ſo; and we ſcuttled the Deck.

Q. What occaſioned your making Water?

A. It came in at the Ports.

Q. What Number of Carriages were diſabled?

A. Three or Four.

Q. Was it from the Enemy's Shot they were diſabled?

A. I can't ſay.

Q. What was the Occaſion of your wanting Trucks?

A. It was from the Violence of the Recoil.

Q. Had you any Men killed or wounded on your Deck?

A. I can't ſay, that I obſerved it.

Q. How many Men had you killed and wounded in all?

A. About Twenty-five in all;—and, I believe, Six of them killed outright.

Then he withdrew.

John Anderſon, Quarter-maſter of the *Dorſetſhire*, called in, and ſworn.

His Depoſition was read, as follows;

John Anderſon, *Quarter-maſter aboard the ſaid Ship, ſworn, depoſeth*;

THAT, in the Engagement aforeſaid, he was quartered at the Helm; and that, when Admiral *Mathews* and the *Marlborough* bore down and engaged the *Spaniſh* Admiral, the *Dorſetſhire* bore down upon the Ship next that Admi-

ral; and, about Half paſt One, that Ship began to fire at us; we hear ſhe was called the *Hercules:* We furled Top-gallant Sails, hauled our Foreſail, and ſtarboarded our Helm, to bring our Guns to bear; ſtanding to the Southward; under our Topſails, the *Namur* then right ahead, and the *Marlborough* open upon our Lee-Bow: Several Shot being fired over us, we began to fire upon the *Hercules*, which we continued near Three Glaſſes: Then the Enemy bore away, with her Main-topſail Yard upon the Cap; but ſhe ſoon hauled her Wind again, and went upon the *Real*'s Lee-Quarter: We wore, ſtanding under our Topſails; kept firing upon the *Hercules* till we were about a Quarter of a Mile, or ſomething more, from the *Real*; Admiral *Mathews* then on our Weather, the *Marlborough* on our Lee-Bow, about a Point, and the *Real* about Four Points: Several Shot came over us, either from the *Real* or *Hercules*, at that time: We ſtill kept edging down nearer them, keeping a conſtant Fire on them, till the *Marlborough* loſt her Maſts: Then our Captain ordered to leave off Firing, till the Smoke was gone, that at the Guns they might ſee the Enemy plain; which when we could do, we fired again, until the *Marlborough* dropt aſtern, between us and the *Real:* Our People then went to ſplicing and mending the ſhot Rigging; which we were near Half an Hour about, when an Officer came aboard to the Captain: I could not hear what he ſaid; but the Captain ordered the Helm aweather, and ſat Top-gallant-Sails, till Lieutenant *Page* ran upon the Quarter-deck, and told the Captain, there was no Powder filled: The Captain ordered the Helm aſtarboard again, called to the Officer juſt gone from us, and ſent for the Gunner; who ſaid, there was no Want of Powder: Then he ordered the Helm aweather again, and we went ahead of the *Marlborough*, and very near the *Real*; who was engaged near a Quarter of an Hour, when ſhe bore away, with her Stern to us, which we fired into very faſt, till we brought to, or ſhould have been to Leeward of Five Sail of the Enemy, who were coming up; and, if they had kept their Wind, might have weathered us, I believe; but they edged away after the *Real:* I ſaw the *Anne Galley* Fire-ſhip coming down ahead of us: Our Captain aſked them, if they were going down to the *Real*, and, if we could be of any Service to them? We could not hear their Anſwer; but, ſeeing her go down to the *Real*, the Captain ſent away the Barge to take up her Men; but the Ship blew up, and the Men came aboard in Two of her Boats: The Captain ordered the Boatſwain to place them to the Rigging and Guns, in the room of thoſe killed and wounded: Soon after that, the headmoſt of the Five Sail of *Spaniſh* Ships, hauled her Wind, and came up to us, and engaged us for about a Quarter of an Hour. Admiral *Mathews*, who was on our Weather-Bow, wore Ship, and ran between us and the Enemy: We ceaſed Firing till he paſſed us; then wore after him, and engaged the Five Sail, as they paſſed, they ſtanding to the Southward, and we to the Northward: We never ſheered from the Enemy, were always near enough the Enemy for our Guns to do Execution; always keeping edging down our Helm the whole Time, either amidſhips or aweather, only when we brought to, to ſecure our Maſts; and we were always in a Line with Admiral *Mathews*, till we bore down to Leeward of the *Marlborough:* The Captain, the whole Time, encouraged the People, and behaved very calmly, and very courageouſly; and the Marines behaving ill, the Captain forced them up to the Nettings to fire.

Sworn by me, *John Anderſon.*
Geo. Atkins, Deputy Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Helm.

Q. Was you within Gun-ſhot, when you firſt engaged the *Hercules?*

A. Yes.

Q. Was you then in a Line with the Admiral?

A. Yes: The Admiral was right ahead of us; and, ſoon after, open to Windward.

Q. Are you poſitive of that?

A. Yes.

Q. Where was the *Marlborough* then?

A. Upon our Lee-Bow.

Q. Under what Sail did you edge down?

A. Under our Topſails.

Q. What Diſtance was you from the *Hercules*, when you began to engage?

A. About half a Mile.

Q. How long did you engage in that Manner?

A. About Three Glaſſes.

Q. Did you ſee the *Marlborough*'s Maſts go away?

A. Yes.

Q. Did you keep edging down the whole Time?

A. We kept always from the Wind.

Q. Did you go to Leeward of the Admiral in the Beginning of the Engagement?

A. No:—We kept in a Line with him.

Q. What Ship did the Admiral firſt engage?

A. The *Real.*

Q. What Ship did the *Marlborough* begin to engage?

A. The *Real.*

Q. Did they both begin together?

A. No: The Admiral fired firſt; and the *Marlborough* ſoon after.

Q. How was the *Namur* from you, when the *Marlborough* began to fire?

A. She was directly ahead of us.

Q. Did the *Marlborough* never engage the *Hercules*, the *Spaniſh* Admiral's Second?

A. I believe not.

Q. Where

Q. Where was you, ſoon after you began to engage, with regard to the Admiral?

A. The Admiral was right ahead; and he hauled off, upon the *Marlborough*'s Running to Leeward of him, to engage the *Real*; and then he bore about Two Points upon our Weather-Bow.

Q. Did you ſee the Fireſhip bear down?

A. Yes.

Q. What Ship forced the *Hercules* to Leeward?

A. Our Ship.

Q. Did you obſerve the *Hercules* to have received any Damage?

A. I ſaw her Main-topſail Yard down upon the Cap; and her Colours down.

Q. Did you ſee the *Hercules* haul up again?

A. Yes; ſhe hauled up ſoon after towards her Admiral, and ſhot under his Lee-Quarter: She ſeemed to be a little to Leeward.

Q. After the *Marlborough*'s Maſts were gone, What did you do?

A. She falling in between us and the *Spaniſh* Admiral, we ceaſed Firing; our Topſails were then ſet.

Q. What did you do, after the *Marlborough* fell in between you and the *Real*?

A. We went to mending our Rigging.

Q. Had you Steerage-way all the Time?

A. Yes.

Q. Did you renew your Fire upon the *Spaniſh* Admiral, after the *Marlborough* dropt aſtern?

A. Yes, when we had opened the *Real* ahead of the *Marlborough*.

Q. How near?

A. Within a Quarter of a Mile.

Q. Was this before the Fireſhip came down?

A. Yes.

Q. Did you obſerve, that the Marines were backward?

A. Yes; and the Captain drove them up to fire.

Q. When the Marines were backward, and drove up by the Captain to fire, what Part of the Engagement was it in?

A. In the firſt Part.

Q. Was you then within Muſquet-ſhot?

A. I can't ſay.

Q. Were any of the Marines killed?

A. Yes; One kill'd, and One wounded.

Q. By what kind of Shot was the Marine killed?

A. I can't ſay.

Q. Did you ever ſee the Admiral to Leeward of the *Dorſetſhire*?

A. Never, till after he wore Ship.

Q. How long did you engage the *Real*, the laſt Time, when you engaged her ſo cloſely?

A. About a Quarter of an Hour.

Q. Did the *Real* bear away before or after the *Dorſetſhire* engaged her ſo cloſely?

A. About a Quarter of an Hour after.

Q. What do you think occaſioned the *Real*'s Bearing away?

A. Our Fire.

Q. Did you ever hear Captain *Cole* ſay, to your Captain, that it was needleſs to fire Small-Arms, becauſe they were not within Reach?

A. No.

Q. Did you hear the Fireſhip hail you?

A. No: I heard no Ship hail us.

Q. Did you obſerve your Boat go to aſſiſt the Fireſhip?

A. Yes—She was hoiſted out to aſſiſt the *Marlborough*; but was ordered to go to the Fireſhip, upon her Bearing down.

Q. Were your Yards ſquare, when the Boat was hoiſted out?

A. I can't be poſitive; but I think the Main-yard was ſquare.

Q. Was your Topſail full, or aback?

A. I can't tell.

Q. Did you hoiſt out any other Boat, beſides the Barge?

A. No.

Q. Did you hear your Captain hail the Fireſhip, as ſhe paſſed by you?

A. Yes—The Captain asked Captain *Mackey*, if he was going down to the *Real*, or if he wanted any Aſſiſtance: But I did not hear any Anſwer.

Q. What Sail had you Abroad, when you bore down to the *Real*, after the *Marlborough*'s Maſts were gone?

A. Foreſail, Topſails, and Topgallant-ſails.

Q. When did you ſhorten that Sail?

A. When we came near the *Real*.

Q. How near did you go to the *Real*, before you ſhortened Sail?

A. Within Gun-ſhot—Near enough to do Execution.

Q. Did any of the *Real*'s Shot reach you?

A. Yes; I ſaw them fly thro' the Sails, and go conſiderably to Windward.

Q. Did you ſee any double-headed Shot, that came on board?

A. No—I was at the Helm all the Time.

Q. Was you within Reach of Small-ſhot?

A. I believe we were.

Q. How far diſtant, in Cables Length, was you then from the *Real*?

A. About Two Cables Length.

Q. Where was the *Marlborough* then?

A. Aſtern, and upon our Weather-Quarter—We did not bring to, till ſhe was ſo.

Q. Did the Marines then fire?

A. No; they were all then at the Great Guns.

Q. How many Men had you killed and wounded upon the Quarter-deck?

A. Two killed, and Two wounded.

Q. Did you ſee the Fireſhip blow up?

A. Yes.

Q. How far was ſhe then from you?

A. About Three-quarters of a Mile.

Q. Was you at the Helm all the Action?

A. Yes.

Q. Was the Captain ever off the Quarter-deck?

A. No.

Q. Did you diſcover him to be in any Diſorder? Or did his Behaviour ſhew any Signs of Fear?

A. No; he behaved very well all the Time; and ſtood on the Arm-Cheſt, encouraging the Men in the Waiſt.

Q. Did you obſerve his Speech to be juſt the ſame as it uſed to be?

A. Yes; the ſame.

Q. Did you obſerve any of the Five *Spaniſh* Ships coming up, to fire at you?

A. Yes; but their Shot did not reach, at firſt.

Q. Did you hear the Orders the Captain gave to the Boat, when ſhe put off to aſſiſt the Fireſhip?

A. No.

Q. Did the Boat go directly to the Fireſhip?

A. Yes; ſhe went directly for her.

Q. Did you hear the Captain ſay any thing to the Gunner, or the Gunner to the Captain, about Powder?

A. I heard the Gunner ſay, there was no want of Powder—It was after Lieutenant *Page* ſaid to the Captain, that there was no Powder filled; at which time the Helm was aweather, and we were bearing down.

Q. How long did you luff up again, upon its being ſaid, there was no Powder filled?

A. A very little while—About Six or Seven Minutes.—The Captain ſent for the Gunner; who ſaid, There was Powder enough filled: And then we bore away again.

Q. Did you ever hear the Gunner tell the Captain, that you were not near enough?

A. No.

Q. Did you hear all that paſſed between the Captain and the Gunner?

A. I heard no more.

Q. Did you hear the Lieutenant tell the Captain, there was no Powder filled?

A. I heard, that he did tell the Captain ſo.

Q. Did you hear the Captain tell the Officers what Ship he was going to fire at?

A. No.

Q. What Part of the Quarter-deck was the Captain generally upon?

A. Upon the Arm-Cheſt, on the Starboard Side.

Q. Are you poſitive, that, from the Time of the Admiral's Meſſage, to aſſiſt the *Marlborough*, you did bear down, till you got to a Diſtance to engage the *Real*, without Luffing up, except at the Time of a Want of Powder being mentioned?

A. Yes; we kept bearing down, and did not luff up at any other Time, till we began to engage the *Real*.

Q. Did your Ship ſteer eaſy, and anſwer her Helm all the Time?

A. Yes.

Q. What Time did you lie to, to repair your Rigging? Was it before or after Bearing away for the *Real*?

A. Before.

Q. Was your Main Maſt ſhot through, before you then bore away, or after?

A. Before.

Q. What was you doing when the Admiral's Officer came on board with a Meſſage?

A. Repairing the Rigging.

Q. In what manner did the Fireſhip paſs by you?

A. She came upon our Larboard-Bow, run round under the Starboard-Bow, ranged alongſide, and then turned off ſhort, and bore down to the *Real*.

Q. Did you ſee the *Marlborough* engage the *Real*?

A. Yes.

Q. Do you think, that the *Dorſetſhire* engaged the *Hercules*, as cloſe as the *Marlborough* did the *Real*?

A. No; I don't think ſhe did.

Q. Had you engaged the *Real*, before the Fireſhip came down?

A. Yes.

Q. How was the Poſition of the *Marlborough* when the Fireſhip bore down?

A. Upon our Weather-Quarter, towing off.

Q. How was the *Real* then?

A. She was bearing away before it.

Q. Did you ever reef your Topſails?

A. No.

Then he withdrew.

Richard Coller, Quarter-maſter on board the *Dorſetſhire*, called in, and ſworn.

His Depoſition was read, as follows;

Richard Coller, *late Quarter-maſter aboard the* Dorſetſhire, *ſworn, depoſeth*;

THAT at the Time of the late general Engagement, as aforeſaid, he was quartered at the Helm: That when Admiral *Mathews* and the *Marlborough* bore down, and engaged the *Spaniſh* Admiral, the *Dorſetſhire* bore down upon the Ship next to him: About Half paſt One ſhe began to fire at us (we hear ſince ſhe was called the *Hercules*): We furled Top-gallant Sails, and ſoon hauled up our Foreſail; ſtarboarded our Helm, to bring our Guns to bear; and ſtood to the Southward, under our Topſails: The *Namur* was then right ahead, and the *Marlborough* with our Lee Cat-head: Several Shot being fired over us, we began to fire upon the *Hercules*, and continued it for about an Hour; then ſhe bore away with her Maintopſail Yard on her Cap; but ſoon hauled her Wind again, and went upon the *Real*'s Lee-Quarter: We, ſtanding under our Topſails, kept firing

firing on her, until we were about a Quarter of a Mile, or ſomething more, from the *Real*; Admiral *Mathews* then on our Weather-Bow, the *Marlborough* upon our Lee-Bow, about one Point, and the *Real* about Four Points: I do well remember ſeveral Shot came over us, either from the *Real* or *Hercules*, one of which went through our Main-maſt: We ſtill kept edging nearer the *Real* and *Hercules*, keeping a conſtant Fire upon them, till the *Marlborough* loſt her Maſts: Then our Captain ordered to leave off Firing, till the Smoke was gone off, that, at the Guns, they might ſee the Enemy plain; and, as ſoon as we could, we fired again, until the *Marlborough* dropt aſtern between us and the *Real:* Then our People went hard to work on our Rigging, which was much ſhot: I believe we were Half an Hour about it; when an Officer came from the Admiral, and told the Captain, He would have him go down, and aſſiſt the *Marlborough:* The Captain ordered the Helm aweather, and hauled the Mizen up, and ſet Top-gallant Sails; but Lieutenant *Page* ran upon the Quarter deck, and told the Captain there was no Powder filled: The Captain ordered the Helm aſtarboard again, and called to the Officer, who was juſt gone from us; ſent for the Gunner, who ſaid, There was no want of Powder: Then the Captain ordered the Helm aweather again, and we went ahead of the *Marlborough*, and very near the *Real*, whom we engaged for very near a Quarter of an Hour: Then ſhe bore away, with her Stern to us, which we fired into very faſt; then we brought to, or we ſhould have been to Leeward of Five of the Enemy, who were coming up: As it was, I believe, if they had kept their Wind, they might have weathered us; but they edged away after the *Real*, after we brought to. I ſaw the *Anne Galley* Fireſhip coming down ahead of us; and Captain *Burriſh* aſked, with his Trumpet, If they were going down to the *Real*; and if he could be of any Service to them? but did not hear their Anſwer: Our Captain ſent our Barge to take up her Men; but, before ſhe got to them, they blew up, and her Men came aboard in Two of her Boats. The Captain ordered the Boatſwain to place ſome to aſſiſt at repairing the Rigging, the reſt to the Guns, in the room of thoſe killed and wounded: Soon after this the headmoſt of the Five *Spaniſh* Ships hauled her Wind, and came up with, and engaged us for about a Quarter of an Hour, when Admiral *Mathews*, who was upon our Weather-Bow, wore Ship, and ran between us and the Enemy: We ceaſed Firing, till ſhe was paſſed us; then wore, and engaged the Five Sail, as they paſſed by us, they ſtanding to the Southward, we to the Northward. I do further declare, That we never ſheered from the Enemy the whole Engagement; that we were always near enough for our Guns to do Execution: We always kept edging down our Helm the whole time, either amidſhips or aweather, except when we brought to; and we were always in a Line with Admiral *Mathews*, until we bore down to Leeward of the *Marlborough:* The Captain behaved the whole time with a great deal of Calmneſs, and a great deal of Courage: The Marines ſeeming pretty backward, the Captain ſeveral times ſhoved them up to the Netting, aſking them, What they were afraid of? And encouraging them to fire.

Richard Coller.

Sworn by me,
Geo. Atkins, Deputy Judge Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Lee-Helm.

Q. Was the *Dorſetſhire* in a Line with the Admiral, when you began to engage?

A. Yes.

Q. What Ship did you engage firſt?

A. The *Hercules*.

Q. What Diſtance was you from her?

A. About Half a Mile.

Q. How long did you continue engaged ſo?

A. About an Hour.

Q. Did you ſee the *Malborough*'s Maſts go away?

A. No: There was a great Smoke: Some of our People ſaid, The *Real*'s Maſts are gone: But when the Smoke cleared, I ſaw it was the *Marlborough*'s Maſts that were gone; and then began to fire again:— After her Maſts were gone, ſhe fell aſtern between us and the *Real*; and then we left off Firing.

Q. Why did you not ſhoot ahead, or drop aſtern of her, at that time?

A. We were then employed in repairing our Rigging, and ſecuring our Main-maſt, which was damaged, by a Shot that went quite through it.

Q. Did the Admiral's Boat come on board of you?

A. Yes, while we were fixing our Rigging.

Q. Did you hear the Meſſage from the Admiral?

A. Yes;—The Admiral deſired the Captain to bear away, and aſſiſt the *Marlborough*; upon which the Captain ordered the Helm aweather, the Top-gallant Sails to be ſet, and the Foreſail dropt; and bore away; till Lieutenant *Page* reported, there was no Powder filled. Then he ordered the Helm aſtarboard again; but, upon the Gunner's ſaying, there was no want of Powder, the Helm was put aweather again.

Q. How long was it after you hauled up, upon the Report of there being no Powder filled, before you bore away again?

A. About Five or Six Minutes.

Q. How long did you engage the *Real*, ahead of the *Marlborough?*

A. About

A. About a Quarter of an Hour.

Q. Why did you then leave off engaging?

A. Becauſe the *Real* then bore away before the Wind: We continued firing into her Stern; and as ſoon as ſhe was out of Gun-ſhot, we brought to.

Q. What o'Clock was that?

A. Between Four and Five.

Q. At what Diſtance did you engage the *Real*, for that Quarter of an Hour?

A. Something better than two Cables Length.

Q. Where was the Fireſhip then?

A. To Windward of us; I did not ſee her, ill after we had brought to.

Q. Did any other Perſon, beſides Lieutenant *Page*, tell the Captain there was no Powder filled?

A. No.

Q. Did you ever ſee the *Namur* to Leeward of the *Dorſetſhire*?

A. No, never after the *Dorſetſhire* began to engage, except in the Evening, when the Admiral wore Ship, and went to Leeward of us.

Q. What time did the Fireſhip come by you?

A. A little after we were out of Gun-ſhot of the *Real*, when ſhe was bearing away before the Wind.

Q. How long had the *Dorſetſhire* lain to, before the Fireſhip came the Length of her?

A. A very little while.

Q. How long after ſhe paſſed the *Dorſetſhire*, was it, before ſhe blew up?

A. About Half an Hour.

Q. Did you hear the Fireſhip hail the *Dorſetſhire*?

A. No.

Q. Did ſhe paſs ahead or aſtern of you?

A. Ahead of us.

Q. Was the Fireſhip hailed by you?

A. Yes, our Captain aſked, If ſhe was bearing down to the *Real*; and if he could be of any Aſſiſtance: To which I did not hear any Anſwer.

Q. Did not the *Hercules* bear away twice?

A. Yes.

Q. Did ſhe fire any Guns, when ſhe was bearing away the Firſt time?

A. Yes.

Q. At the *Marlborough*?

A. I believe, ſhe was at too great a Diſtance from the *Marlborough*.

Q. When you was the laſt time cloſely engaged with the *Real*; did you receive any Shot from her?

A. Yes; their Shot went through our Sails, and over us; but I don't know of their ſtriking the Ship.—The Damage we received, was when we engaged the *Hercules*.

Q. When Captain *Burriſh* was puſhing up the Marines to the Nettings, to fire; was any thing ſaid to him, by Captain *Cole*, or any one elſe, of being at too great a Diſtance?

A. No.

Q. Was you then within Muſquet-ſhot?

A. I believe ſo; if Half a Mile is within Muſquet-ſhot.

Q. Was you the Firſt of our Ships, that the *Hercules* fired at?

A. Yes, I believe ſo.

Q. Was you near enough to ſee her Men upon Deck?

A. I cannot ſay.

Q. Did you obſerve any Shot to fall ſhort from the *Hercules*?

A. No;—their Shot came on board us, and over us, before we began to fire.

Q. Did you ſee many Shot fly over you?

A. Yes, a great many.

Q. What Sails had you ſhot?

A. Moſt of them.

Q. What Sails had you ſhot moſtly?

A. The Fore-top Sail.

Q. Was it ſo ſhot, as to be unſerviceable?

A. It was repaired the next Morning; it was a half-worn Sail before.

Q. At the Firſt Part of the Engagement, was the Word of Command chiefly, Luff, or, No near?

A. No near.

Q. Did you ever, at any time of the Engagement, go farther from the Enemy, than at firſt?

A. Never.—We went edging nearer.

Q. Who Cunned the Ship chiefly? The Maſter, or the Captain?

A. The Captain chiefly.

Q. Did you hoiſt your Jib, when you edged away?

A. I can't ſay.

Q. Did you ever alter your Sails?

A. We ſquared our Yards, as the Ship wore.

Q. How much might you go, when you bore down?

A. About two Knots; I believe, that was the leaſt we went, during the Engagement, when we made Sail; but I can't be poſitive, becauſe I did not heave the Log.

Q. Did your Sails ſleep?

A. Yes.

Q. Had the Ship Steerage-way all the Time? Did the Ship anſwer her Helm?

A. Yes; ſhe anſwered the Helm during the whole Engagement.

Q. Where did you ſee the *Namur*, at the Beginning of the Engagement?

A. Right ahead.

Q. What Sail was ſhe under?

A. Her Foreſail was up; and ſo was ours.

Q. Where was the *Marlborough*, when the *Namur* was right ahead?

A. Upon the *Namur*'s Lee-Quarter.

Q. Did the *Marlborough* direct her Shot at the *Real*, or *Hercules*?

A. She never fired at the *Hercules*, I believe.

Q. Did the *Hercules*, when ſhe bore away, fire at your Ship, or the *Marlborough*?

A. Several

A. Several of her Shot then went over our Ship; for ſhe did not fall off much, only yawed a little.

Q. When you heard, that the *Marlborough*'s Maſts were gone, was your Helm ordered to be put aweather?

A. We kept on as before.

Q. Did you obſerve the *Marlborough* to fire at the Enemy, after her Maſts were gone?

A. Yes.

Q. At what Ship?

A. I believe, at the *Real.*

Q. Did you ever ſee the *Hercules* fire upon the *Marlborough?*

A. No, not that I know of.

Q. When the *Marlborough*'s Maſts were gone, could the *Dorſetſhire* have bore down under her Stern, and given her Aſſiſtance?

A. I believe not;—I believe ſhe might;—but I can't tell: The *Marlborough* was then about Two Points on our Lee-Bow, and very near.

Q. Was the *Real* then before, or abaft the *Marlborough*'s Beam?

A. The *Marlborough* was before the *Real*'s Beam, till the *Marlborough* dropt aſtern; and then I could not ſee the *Real.*

Q. Did you engage the *Real*, before the *Marlborough*'s Maſts went away?

A. Yes; and were engaging her, when the Maſts went away, till the *Marlborough* dropt aſtern.

Q. At the Time you then fired at the *Real*, did you at the ſame time engage the *Hercules?*

A. Yes.

Q. At that time do you think the *Hercules*'s Bow-Guns could have been fired upon the Lee-Quarter of the *Marlborough?*

A. I can't ſay; though I think ſhe might bring ſome Guns to bear upon the *Marlborough.*

Q. How far was the *Hercules* aſtern of her own Admiral at that time?

A. Between Two and Three Cables Length, to the beſt of my Knowlege.

Q. How was the *Marlborough* from the *Spaniſh* Admiral?

A. I think, rather before the *Spaniſh* Admiral's Beam.

Q. Do you think the *Spaniſh* Ships aſtern could have fetched you?

A. Yes; I am ſure they could, after we bore down to engage the *Real.*

Q. Are you poſitive you was to Leeward of the *Marlborough*, before the *Real* bore away.

A. Yes, I am poſitive of it; we bore down ahead of the *Marlborough.*

Q. Did any of the *Spaniſh* Ships aſtern engage you, when they came up?

A. Yes; the headmoſt did; and ſome of their Shot reached.

Q. At what time was that?

A. About Half paſt Four.

Q. Was it before the Fireſhip blew up?

A. Yes; ſhe did not blow up till about Five.

Q. If your Ship had bore down aſtern of the *Marlborough*, inſtead of going ahead, Do you think ſhe would have been nearer to the *Real?*

A. I can't ſay.

Q. Was the *Real* ahead of the *Marlborough?*

A. Yes.

Q. When you firſt began to engage the *Hercules*, Was you as near to her, as the *Namur* and *Marlborough* were to the *Real?*

A. No; the *Namur* and *Marlborough* were nearer.

Q. When did you luff up?—when the Admiral did, or when the *Hercules* began to fire?

A. We ported our Helm, when the Admiral ſhot ahead of the *Marlborough.*

Q. Did the *Hercules* fire at you, any time before you luffed up?

A. Yes:—She fired at us ſome time before; and the Shot reached us, and went as far over us, as we were from the *Hercules.*

Q. How was the *Hercules*, with regard to the *Spaniſh* Line?

A. She was rather to Leeward of the *Real.*

Q. When you engaged the *Real*, Was you to Leeward of the *Marlborough?*

A. Yes; ſhe was upon our Weather-Quarter.

Q. When you ſhot ahead of the *Marlborough*, Did you ſee the *Spaniſh* Admiral's Second?

A. No.

Q. Where was ſhe gone?

A. To Leeward of her Admiral, and out of the Line.

Q. Were there Four, or Five, *Spaniſh* Ships aſtern of the *Hercules?*

A. There were Five.

Then he withdrew.

Juan Baptiſto, Quarter-maſter on board the *Dorſetſhire*, called in, and ſworn.

His Depoſition was read, as follows:

John Baptiſto, *Quarter-maſter at the Time aforeſaid, on board the* Dorſetſhire, *ſworn, depoſeth*;

THAT he was quartered to the Cunn; and that when Admiral *Mathews* and the *Marlborough* bore down and engaged the *Spaniſh* Admiral, the *Dorſetſhire* bore down to the Ship next to the *Spaniſh* Admiral; that, about Half paſt One, the ſaid Ship began to fire at us: Soon after the Captain ordered the Helm aſtarboard; and we fired upon that Ship, until ſhe got up to the *Spaniſh* Admiral; then the Captain ordered the foremoſt Guns to be fired upon the ſaid Admiral, and the aftermoſt upon the Ship aſtern of him; which Ship, we heard afterwards, was called the *Hercules:* I remember, the Captain told the Maſter, to keep Admiral *Mathews* always open upon our Larboard-Bow; which we did the whole Engagement, until we wore Ship and ſtood to the Northward: We then had been engaged a little while with the headmoſt of the Five *Spaniſh* Ships, who were coming up, but left off

Firing, whilſt our Admiral paſſed us; then we were under his Lee-Quarter, and engaged thoſe Ships, as they paſſed us; for they were ſtanding to the Southward. The Captain behaved all the Time with great Calmneſs, and exceeding well, encouraging the Marines, who were backward enough; aſking them, What they were afraid of? Carrying them up to the Netting, and encouraging them to fire.

his
John J+ *Baptiſto*,
Mark.

Sworn by me,
Geo. Atkins, Deputy Ju. Ad.

And he declared the ſame to be true.

Q. When you hauled up, was you in a Line with the Admiral?

A. The Admiral was right ahead of us.

Q. What Diſtance was you then from the Enemy?

A. About Half a Mile.

Q. Are you ſure the Admiral was right ahead of you?

A. Yes.

Q. How had you the Wind, when the Admiral was ahead of you?

A. We were from the Wind.

Q. Did you ſtand at the Compaſs, to cunn the Ship?

A. Yes.

Q. Did you ſtand in your Cunning, upon the Middle of the Quarter-deck, or by the Netting?

A. A-midſhips, by the Mizen-maſt.

Q. In what Poſition did your Captain give Directions to keep the Ship?

A. He ordered the Maſter to keep the Admiral always a little open, upon the Larboard-Bow.

Q. Did you obſerve the *Marlborough* when her Maſts were gone?

A. Yes.

Q. How was ſhe then?

A. A little to Leeward, about a Point upon our Starboard-Bow.

Q. What Courſe was you going then?

A. About South or South-by-Weſt.

Q. Did you alter your Courſe after the *Marlborough*'s Maſts were gone?

A. Yes, very ſoon after.

Q. Did you haul up, or edge away?

A. We could not bring our Guns to bear upon the *Real*, becauſe the *Marlborough* came between her and us.

Q. What Ship did you fire upon; the *Real*, or the *Hercules*?

A. The *Hercules* firſt, and afterwards both the *Hercules* and *Real*.

Q. How was the *Hercules* with regard to the *Spaniſh* Admiral?

A. A little to Leeward.

Q. Are you poſitive of that?

A. Yes, I am poſitive of it.

Q. How far was ſhe aſtern of her Admiral?

A. About Half a Mile.

Q. How far was the *Real* from you, when you fired at the *Hercules* at firſt?

A. The *Hercules* was better than Half a Mile aſtern of the *Real*, and to Leeward withal; and the *Dorſetſhire* was then about Half a Mile from the *Hercules*.

Q. Was you then abreaſt of the *Hercules*?

A. Yes.

Q. How long was it after you began to engage the *Hercules*, that you began to engage the *Real*?

A. Better than Half an Hour.

Q. When you engaged the *Real*, how far might the *Hercules* then be aſtern of the *Real*?

A. About a Cable's Length and an Half, or Two Cables Length.

Q. So then you engaged both Ships?

A. Yes; as ſoon as the *Hercules* had ſhot up to the *Real*, the Captain ordered the foremoſt Guns to be fired at the *Real*, and the aftermoſt at the *Hercules*.

Q. Did the *Hercules*'s Shot reach you at the Beginning of the Action?

A. Yes, and went far over us.

Q. Had you any Men killed at the Beginning of the Action?

A. Yes, Two killed upon the Quarter-deck, and Two wounded.

Q. Was your Main-maſt wounded?

A. Yes.

Q. At what time?

A. A little before the *Marlborough*'s Maſts were gone.

Q. How did you keep your Ship at that time?

A. The *Namur*, after ſhe hauled off, was always to Windward of us.

Q. When the *Marlborough*'s Maſts were gone, In what Situation was ſhe, with regard to you?

A. About Two Points upon our Lee-Bow.

Q. How far was the *Marlborough* then from you?

A. About a Cable's Length and an Half; and upon her Maſts falling, our Sails were ſhivered, in order to keep the *Real* open; but the *Marlborough* dropt aſtern, between us and the *Real*; and then we lay to, to ſecure our Maſts.

Q. What time did the Admiral's Boat come on board you?

A. Juſt as we were lying to.

Q. How long did you lie to?

A. About Half an Hour.

Q. How long did you lie to, before the Admiral's Boat came on board?

A. About a Quarter of an Hour.

Q. And how ſoon afterwards did you bear away?

A. A few Minutes afterwards: The Officer talked ſome time to the Captain; and then the Captain ordered the Top-gallant-ſails to be looſed, and the Foreſail to be let fall; and bore away.

Q. Why did the Captain chuſe to go ahead of the *Marlborough*, rather than aſtern?

A. We could not go aſtern, there not being Room to wear under her Stern.

Q. What Diſtance was you then from her?

A. Not above a Cable's Length and an Half.

Q. Was the Maſter upon Deck all the Time of the Action?

A. Yes.

Q. How near did you paſs to the *Marlborough* in Bearing down?

A. Within leſs than a Cable's Length.

Q. After you paſſed the *Marlborough*, and got between her and the *Real*, How near might you be to the *Real?*

A. About a Quarter of a Mile.

Q. How many Cables Length do you think you might be from her?

A. About Three Cables Length.

Q. Was the *Real* put before the Wind, before you came to that Diſtance?

A. No: We engaged her about a Quarter of an Hour, before ſhe bore away.

Q. What Time was that?

A. Between Four and Five o'Clock.

Q. When did the Fireſhip blow up?

A. About Five o'Clock.

Q. When you paſſed by the *Marlborough*, What Poſition might the Admiral be in?

A. About Half a Mile from us.

Q. Did he lie with the *Real* aſtern of him?

A. I cannot ſay.

Q. How did he bear from your Ship?

A. About a Point and an Half upon our Weather-Bow.

Q. You are poſitive the *Real* did not bear away, till after you began to engage her?

A. I am poſitive ſhe did not bear away, till after we had engaged her about a Quarter of an Hour.

Q. How long did you fire at her, after ſhe bore away?

A. A very little time.

Q. Did you continue engaging her, as long as ſhe was within Gun-ſhot?

A. Yes, till I ſaw the Shot fall ſhort of her.

Q. What Diſtance might the *Marlborough* be on your Weather-Quarter, when you left off Firing?

A. About Half a Cable's Length, upon our Weather-Quarter towing away.

Q. How did the Fireſhip come down, ahead or aſtern of you?

A. Ahead of us.

Q. In what Manner?

A. She made a Sweep; our Captain hailed her, and aſked, If ſhe was going to the *Real:* To which I heard no Anſwer; and by her Courſe, and not anſwering, it was thought ſhe was not going down to the *Real.*

Q. Did ſhe come under your Bow?

A. Yes.

Q. What Diſtance was ſhe from the *Dorſetſhire*, when ſhe blew up?

A. About Four Cables Length.

Q. Did you ſee any one of the ſternmoſt *Spaniſh* Ships fire at the Fireſhip?

A. Yes, the headmoſt fired; but the Shot fell ſhort; I ſaw the Shot fall into the Water.

Q. How far was the Fireſhip from you, when you hailed her?

A. About Half a Cable or a Cable's Length.

Q. You might have gone nearer the *Real* the laſt time you bore down?

A. If we had gone further to Leeward, the Five Ships aſtern would have weathered us.

Q. Could you not have gone nearer to her, before you began to engage her?

A. We engaged her within a Quarter of a Mile.

Q. Did you receive any Shot from the *Real*, the laſt time you engaged her?

A. I did not ſee any, but ſome that went through the Topſails and Top-gallant-ſails; and they flew far to Windward.

Q. How far did they go beyond you?

A. As far as we were from her.

Q. Did the *Real* fire ſmartly?

A. Not very ſmartly.

Q. Was you upon Deck the whole Time?

A. Yes.

Q. Did you keep the Admiral always open upon your Weather-Bow?

A. Yes, always, till after he wore.

Q. Where was Mr. *Leſtock*'s Diviſion?

A. I took no Notice; I ſaw the *Spaniſh* Ships coming up; but I did not look at Mr. *Leſtock*'s Diviſion.

Q. When you looked out to ſee the Five *Spaniſh* Ships coming up, Did you obſerve our Ships aſtern, or to Windward?

A. I ſaw the *Eſſex*; but minded no other Ship.

Q. Could you ſee the *Eſſex*, and the Five *Spaniſh* Ships, coming up, and not ſee any Ships coming up between them?

A. I ſaw only the Five Sail of *Spaniards* coming up.

Q. How far were the Five Sail of *Spaniſh* Ships from the *Dorſetſhire*, at the time you was cloſely engaged with the *Real?*

A. About a Mile.

Q. What Part of the Ship did you look over, when you ſaw the *Eſſex?*

A. Over the Larboard-Quarter.

Q. What Diſtance was ſhe off?

A. About Two Cables Length.

Q. Did ſhe engage the *Spaniſh* Ships aſtern?

A. I can't tell.

Q. When you ſaw the *Eſſex*, Did you not ſee Admiral *Leſtock*'s Diviſion?

A. No, I could not, for the Smoke of the other Ships: I could ſee only the *Eſſex.*

Q. Had you any Men killed at the End of the Engagement?

A. Yes, at the End and Beginning too.

Q. How far was the headmoſt of the Five *Spaniſh* Ships from you, when the Fireſhip blew up?

A. Better than a Mile.

Q. How far was the Fireſhip then from you?

A. About

A. About Four Cables Length.

Q. Are you poſitive there were Five Sail beſides the *Hercules?*

A. Yes, I am poſitive there were Five beſides the *Hercules:* The *Hercules* was then gone ahead of the *Real*, and to Leeward.

Q. Did you not ſee the *Cambridge* and *Dunkirk?*

A. No.

Then he withdrew.

The Court adjourned till To-morrow Morning, Eight o'Clock.

The Sixth Day's TRYAL of Captain GEORGE BURRISH,

On Board His MAJESTY'S *Ship the* London, *at* Chatham,

WEDNESDAY, the 2d of *October*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, who were Yeſterday.

The Priſoner being brought in by the Marſhal;

The Witneſſes were ordered to be called in.

John Walker, Midſhipman on board the *Dorſetſhire*, was called in, and ſworn.

His Depoſition read, as follows;

John Walker, *late a Midſhipman on board his Majeſty's Ship the* Dorſetſhire, *at the time of the late Engagement between his Majeſty's Fleet, and the Combined Fleets of* France *and* Spain, *on the 11th of* February, 1743. *maketh Oath;*

THAT he was quartered in the Larboard Gangway to paſs the Word, during the ſaid Engagement: That the *Dorſetſhire* kept bearing down with the Admiral, and the *Marlborough*, at a proper Diſtance, until paſt One o'Clock; when Admiral *Mathews* bore down to the *Real*, and began to engage her; but the *Marlborough* running between the Two Admirals, the *Namur* hauled her Wind, and ſhot farther ahead: All this the Deponent obſerved, while the *Dorſetſhire* was alſo bearing down to the Ship next aſtern of the *Real*; and which, he has ſince been informed, was the *Hercules:* That the *Dorſetſhire* went down, to the beſt of his Judgment, within Half a Mile of the *Hercules*, who then fired, and moſt of her Shot went over the *Dorſetſhire:* Upon which, Captain *Burriſh* ordered the Top-gallant Sails to be taken in, and hauled her Wind; and brought Admiral *Mathews* right ahead, or rather open, upon her Weather-Bow; the *Marlborough*, about a Point and an Half upon her Lee-Bow; the *Eſſex*, upon her Weather-Quarter; and the *Hercules* to Leeward, and abreaſt of her: In this Poſture, the *Dorſetſhire* began to engage the *Hercules* (and after exchanging a Broadſide or two, the Foreſail was hauled up); and, in a ſhort time, ſhe killed Two Men, and broke another Man's Leg upon the *Dorſetſhire*'s Quarter-deck: That Captain *Burriſh* ordered the Marines to fire; Captain *Cole*, their commanding Officer, obſerving to Captain *Burriſh*, that they were near enough to fire Small-Arms: That the *Dorſetſhire* continued engaging the *Hercules* for better than an Hour, when the *Hercules* bore away; her Main-topſail Yard being down on the Cap, and her Colours down; but ſhe in a few Minutes hauled her Wind again, and went under the *Real*'s Lee-Quarter, the *Dorſetſhire* keeping a conſtant Fire at her, except for about Six or Seven Minutes, that the *Dorſetſhire* was edging away nearer to the *Real*; when, being ſhot nearer to the *Real*, and able to point Guns forward to fire at her, the *Marlborough* being at that time about a Point upon the *Dorſetſhire*'s Lee-Beam, Admiral *Mathews* about Two Points upon her Weather-Bow, the *Eſſex* almoſt upon her Weather-Bow, and the *Real* about Four or Five Points upon her Lee-Bow; in this Poſture, and keeping the Main-topſail ſhivering (in order, as this Deponent ſuppoſed, to keep the *Real*'s Quarter open), the *Dorſetſhire* engaged the *Real* and *Hercules* together. Some time afterwards, the *Marlborough* loſt her Maſts; upon which, the *Dorſetſhire*'s Head Sails were braced to the Maſt, in order to keep the *Real*'s Quarter open: But the *Real* ſhot ſo faſt ahead, that ſhe was ſoon ſhut in by the *Marlborough*; which obliged the *Dorſetſhire* to leave off Firing; and then her People were employed in repairing the Rigging, ſecuring the Main-maſt, pumping the Ship, and repairing ſome Guns for about Half an Hour. In the mean time, an Officer came on board the *Dorſetſhire*, and aſked for the Captain: This Deponent ſhewed him the Captain: He then told the Captain, It was the Admiral's Orders he ſhould aſſiſt the *Marlborough:* Captain *Burriſh* ſaid, He wiſhed he knew what the Admiral would have him do, and he ſhould be glad to do it: He likewiſe aſked the Lieutenant, If he thought it would be agreeable to the Admiral, if he bore down ahead of the *Marlborough*, and engaged the *Real:* The Officer anſwered, He did not know any farther, but he was to aſſiſt the *Marlborough:* The Officer then went away; but ſoon returned alongſide

ſide the *Dorſetſhire*; and told the Captain, It was the Admiral's Orders for him to bear down and engage the *Real*: Captain *Burriſh* anſwered, I will, Sir, directly; and at the ſame time, ordered the Jib to be hoiſted, the Top-gallant Sails to be ſet, the Helm aweather, and the Foreſail to be let fall: Then Mr. *Page* reported to the Captain, that there was no Powder filled: The Captain was greatly ſurpriſed; and, with his Speaking-Trumpet, called to the aforeſaid Officer, and told him the ſame: At the ſame time ſent for the Gunner, and aſked him, in a great Paſſion, the Reaſon there was no Powder filled: The Gunner anſwered, there was enough to go along-ſide what Ship he thought proper: The Captain then looked over the Quarter, in order to call to the aforeſaid Officer; but he was not within Hail: Upon the Captain's being informed there was no Powder, he ordered the Helm aſtarboard: But, upon the Gunner's ſatisfying him to the contrary, he ordered the Helm aweather again; and then we bore down to the *Real*. In Bearing down to her, Captain *Burriſh* ordered this Deponent to call the Lieutenants to him; and this Deponent deſired Mr. *Penrice*, a Midſhipman, quartered at the Braces, to call ſome of them, and called the reſt himſelf: When they came up, this Deponent was preſent; and heard the Captain ſay to the Lieutenants, Gentlemen, I ſent for you to ſhew you the Situation of our Ship to Windward; likewiſe thoſe Five Sail of the Enemy, that are aſtern of us: I have my Orders to engage the *Real*, which you ſee I am Bearing down to. Mr. *Page* and Mr. *Griffith* then ſaid, Sir, We can do it with Safety. Mr. *Davids* and Mr. *Smelt* added, To be ſure, we can. Then the Captain ſaid, Gentlemen, I don't ſend for you to aſk your Opinions; but only to obſerve, that not one of our Ships is coming down to my Aſſiſtance, in order to cut thoſe Five Sail off; and in caſe thoſe Five Sail ſhould oblige me to haul my Wind again, and leave the *Marlborough*, that you may all be able to indemnify my Conduct, if called in Queſtion; or Words to that Effect. The *Dorſetſhire* then engaged the *Real*, at about the Diſtance of Two Cables Length, or nearer: After engaging her a ſmall time, ſhe turned her Stern to the *Dorſetſhire*, who continued Firing, till the Shot would do no Execution, by reaſon the *Dorſetſhire* was obliged to lie to, or the Sternmoſt Five Sail of the Enemy would have been to Windward of us; and, in this Deponent's Opinion, they would have weathered the *Dorſetſhire*, as it was, if they had not edged down to the *Real*. Soon after, the *Marlborough*'s Lieutenant came along-ſide; and told Captain *Burriſh*, His Captain, and ſeveral of their Officers and Men, were killed and wounded; and deſired the Aſſiſtance of a Boat: The Captain then ordered the Barge to be hoiſted out directly; but the *Anne Galley* Fireſhip coming paſt the *Dorſetſhire*, Captain *Burriſh* hailed her, and aſked, Whether ſhe was going to the *Real*; and whether he could be of any Service to her? The Anſwer this Deponent did not rightly underſtand; but thought it was, No, No: At the ſame time, this Deponent did not imagine ſhe was going to any Ship, by reaſon of her taking ſo great a Sweep: But when we obſerved ſhe was Bearing right down to the *Real*, Captain *Burriſh* ſent the Barge to her, inſtead of the *Marlborough*, in order to ſave her People; but, before the Barge got to her, ſhe was blown up, and the People came on board the *Dorſetſhire* in their own Boat: Soon after this, the *Dorſetſhire* was engaged with the headmoſt of the Five Sail of the Enemy, till Admiral *Mathews* wore, and run between her and the Enemy; when the *Dorſetſhire* left off Firing, till he was paſs'd; and then wore after him, and engaged the Five Sail in paſſing each other, they ſtanding to the Southward, and the *Dorſetſhire* to the Northward, which ſoon parted them, Day-light being juſt cloſed; when Firing was left off.

John Walker.

Sworn the 31ſt *Auguſt*, 1745, before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. In the Larboard Gangway, to paſs the Word.

Q. Was you in a Line with the Admiral, when you firſt brought to?

A. When the Admiral firſt bore down, we went in a Line abreaſt with him; and when we brought to, after the *Hercules* had fired ſeveral Guns at us, we brought the *Namur* right ahead; and, ſoon after, I ſaw the *Namur*'s Weather-Quarter.

Q. At the firſt of the Action, was you cloſe to the *Marlborough?*

A. The *Marlborough* engaged the *Real*, and we engaged the *Hercules*, who was a good way aſtern of the *Real*.

Q. Was the *Hercules* in a Line with the *Real?*

A. Yes; but not well cloſed.

Q. If you had been in a Line with the *Namur* and *Marlborough*, you muſt have been as near the *Hercules*, as the *Namur* and *Marlborough* were to the *Real?*

A. No: The *Marlborough* obliged the Admiral to haul off; and we were only in a Line with the Admiral.

Q. When did the Admiral haul off?

A. After he had exchanged about Two Broadſides.

Q. Were the *Hercules* and *Real* in a Line at firſt?

A. Yes; but the *Hercules* was Half a Mile aſtern of the *Real*.

Q. Did you lie right abreaſt of the *Hercules?*

A. Yes.

Q. How did you bear from the *Marlborough?*

A. A Point and an Half upon her Weather-Quarter.

Q. How did you obſerve the *Namur*, when you firſt brought to?

A. Right ahead, her Three Maſts being in One; and afterwards, upon our Weather-Bow.

Q. Did you bring to, when you engaged?

A. No: We engaged under our Three Top-ſails; we hauled our Foreſail up, after Two or Three Broadſides.

Q. Did you haul your Wind, when the *Namur* did?

A. No: We were obliged to port the Helm to run down to the Ship aſtern of the *Real*, till we got abreaſt of her.

Q. When the *Namur*'s Maſts were in One, was it after the *Namur* hauled off?

A. Yes.

Q. Did you, from the time you firſt brought to, to engage, till the *Marlborough* loſt her Maſts, keep in a Line with the *Namur?*

A. Yes: We kept in a Line with, or rather to Leeward of the *Namur*.

Q. Was not the *Namur*'s Stern to the Enemy, after ſhe hauled off?

A. I never obſerved her Stern to the Enemy.

Q. How long did you engage the *Hercules*, before ſhe bore away?

A. Better than an Hour.

Q. At the firſt of the Engagement, you ſay, the *Namur* hauled off: Did you not at any time of the Engagement ever ſee the Admiral to Leeward of you?

A. No: The Admiral was, during the whole Engagement, to Windward of us, except when he wore, and juſt at the Beginning of the Engagement.

Q. How long did the Admiral continue to engage, before he hauled off?

A. I believe, about Six or Seven Minutes; and, after that, he was upon our Weather-Bow.

Q. Did the Admiral haul off in Six or Seven Minutes?

A. Yes, in about Seven Minutes: He did not exchange above Two Broadſides.

Q. What was the Meaning of the *Namur*'s hauling off?

A. The *Marlborough* obliged him to haul off.

Q. Was you ever within Muſquet-ſhot, during the firſt Part of the Engagement?

A. I believe we might be within Muſquet random Shot; I believe we were within Half a Mile; and I think a Muſquet will carry Half a Mile.

Q. Were there any Muſquet-ſhot in your Sails, or through your Sides?

A. I can't ſay.

Q. Did Captain *Cole* tell your Captain, that you was near enough to fire Small-Arms?

A. Yes.

Q. Are you ſure of that?

A. Yes, I am poſitive of it; I heard the Words.

Q. What time of the Day was it?

A. Soon after we began to engage the *Hercules*.—It was after we had exchanged Three or Four Broadſides.

Q. Was you Half a Mile off then?

A. Yes.

Q. Was you within Muſquet-ſhot of the *Hercules?*

A. I can't be poſitive, that we were within Muſquet-ſhot.

Q. Did you not hear Captain *Cole* tell Captain *Burriſh* afterwards, That Muſquet-ſhot would do no Execution?

A. No; I did not hear it: But when Captain *Burriſh* obſerved the Men to fire irregularly, he ordered them to leave off.

Q. Had you any Muſquet-ſhot come from the *Hercules* to you?

A. No, I did not obſerve any.

Q. What time did the *Hercules* bear away after you engaged her?

A. In little more than an Hour.

Q. What Poſition was the *Marlborough* in, with regard to you, when the *Hercules* bore away?

A. About a Point on our Lee-Bow, or better?

Q. What did you do afterwards?

A. We edged nearer, and ſhot up to the *Marlborough*, and engaged both the *Real* and *Hercules*.

Q. How near did you edge down to the *Marlborough?*

A. Within about Two Cables Length of her.

Q. How was the *Real* then from the *Marlborough?*

A. The *Real* was then rather before the *Marlborough*'s Beam.

Q. What Sail had the *Hercules*, when you engaged her?

A. Her Foreſail and Three Topſails.

Q. How near was you to the *Real*, when you edged nearer the *Marlborough*, and engaged both the *Real* and *Hercules?*

A. About Three Cables Length, or better.

Q. Was this before the Admiral's Boat came on board?

A. Yes; it was before the *Marlborough*'s Maſts were gone.

Q. What Diſtance was you then from the *Hercules?*

A. Within Half a Mile of her.

Q. How far was you from the *Real*, when the *Marlborough*'s Maſts were gone?

A. About Two Cables Length.

Court. It's pretty extraordinary, that the Admiral ſhould ſend a Boat on board, for you to go and aſſiſt the *Marlborough*, if you was then engaged within Two Cables Length of the *Real.*

Witneſs. I mean, we were within that Diſtance, when

when we bore down ahead of the *Marlborough*; and engaged the *Real*, after the *Marlborough*'s Masts were gone.

Q. Did you engage the *Hercules*, as close as the *Marlborough* did the *Real*?

A. No: We engaged as close as the *Namur* did.

Q. Was this before the *Marlborough*'s Masts went away?

A. Yes.

Q. How long did you engage the *Real* and *Hercules* together?

A. It might be about Half an Hour; but I can't be positive as to the Time.

Q. Did the *Hercules* shorten Sail?

A. I think she hauled her Foresail up, after she got under the *Real*'s Lee-Quarter.

Q. How far was you from the *Marlborough* when you engaged the *Real* and *Hercules*?

A. About Two Cables Length, and about a Point to Windward.

Q. What time did the Admiral send the Second Message to you?

A. Between Three and Four o'Clock.

Q. Was it immediately after the First Message?

A. Not immediately; it was soon after.

Q. What was you doing then?

A. Pumping the Ship, and mending the Rigging.

Q. What did your Captain do upon that Message?

A. He bore down ahead of the *Marlborough*, and engaged the *Real* within about Two Cables Length.

Q. How long did you engage the *Real* in that Position?

A. About a Quarter of an Hour; and then she turned her Stern to us, and bore away; and then we kept a continual Firing into her Stern, till our Shot could not do Execution.

Q. What time did the Fireship hail you?

A. She did not hail us.

Q. What time did she pass by you?

A. She passed by us after we engaged the *Real*.

Q. Had the *Real* bore away then?

A. Yes.

Q. While you lay to, did any Ship engage you, while you lay to, mending your Shrouds?

A. No: I don't remember any did.

Q. Was any Ship then between you and the Enemy?

A. Yes; the *Marlborough*.

Q. When you so lay to, What Distance was you from the Enemy?

A. About Four Cables Length from the *Real*; the *Marlborough* was between us.

Q. How far was you from the *Marlborough*?

A. About Two Cables Length.

Q. Could you not have gone astern of the *Marlborough*, instead of going ahead?

A. No, we could not; there being a great Swell.

Q. At what Distance did you engage the *Real* the Second time?

A. About Two Cables Length.

Q. How long did you engage her at that Distance?

A. About a Quarter of an Hour.

Q. Was that before or after you spoke to the Fireship?

A. Before.

Q. What Answer did you hear from the Fireship, when your Captain hailed her?

A. I don't know certainly what Answer was made.

Court. You declare in your Deposition, that they said, No, No.

The Judge Advocate then read that Part of his Deposition, as follows; *viz.* "The "Answer this Deponent did not rightly "understand; but thought it was, No, No."

Q. What Side of the Ship was Captain *Burrish* on, when he hailed the Fireship?

A. On the Starboard Side.

Q. You might have gone nearer down at first, without Danger of the Five Sail of the *Spanish* Ships?

A. In that case we should have been to Leeward of the Line, and out of our Station.—We might have gone down nearer, but then we should have been to Leeward of the *Namur*.

Q. When you brought to, first of all, in a Line, Were the *Namur*'s Masts and yours in one?

A. Yes.

Q. What Position was the *Namur* then in? Had she, when you brought up, luffed up from the Enemy?

A. Yes; she had luff'd up to give Way to the *Marlborough*; and then we were in a Line with her.—When we brought to, we were about the same Distance from the *Hercules*, as the *Namur* was from the *Real*.

Q. How was the *Namur*'s Position at the Time you brought up?

A. She was right ahead, with her Stern towards us.

Q. How long was it after the *Namur* began to engage, that she hauled off, and you brought up?

A. Six or Seven Minutes; and I then saw her Masts in one.

Q. How could you then keep her Three Masts in one? They should rather seem to be open to you.

A. No: She was right ahead, and at first her Masts near in one; but she was afterwards rather to Windward of us.

Q. What Distance was the *Namur* to the *Real*, when you engaged the *Hercules*?

A. About Half a Mile, the same Distance that we were from the *Hercules*.

Q. Do you think, that, in the Beginning of the Action, you engaged the *Hercules*, as near as the *Namur* engaged the *Real*?

A. No;

A. No; but after the *Namur* hauled off, which was within Six or Seven Minutes, we were as near.

Q. Did you bring to, to engage the *Hercules*, before the *Namur* hauled off?

A. No:—We were then Bearing down, and porting the Helm, till after the *Namur* hauled off.

Q. Did you engage within Point-blank?

A. I am no Judge of Point-blank; but if the Ship had been upon an even Keel, the Shot would have reached without lowering the Metal.

Q. Did your Shot reach the *Real?*

A. Yes; I believe ſo.

Q. Did any Shot go over your Ship?

A. Yes; ſeveral, before we began to engage.

Q. How many Men had you killed?

A. I heard that Six were killed, and Nineteen wounded.

Q. What was the Reaſon of your Hauling off?

A. We did not haul off.—After the *Hercules* bore away, we edged down nearer to the *Marlborough*; and engaged the *Real* and *Hercules*, till the *Marlborough* dropt aſtern.

Q. Did you ſend any Boat to the *Marlborough?*

A. No:—The Barge was hoiſted out to aſſiſt the *Marlborough*; but the Fireſhip coming up, ſhe was ſent to aſſiſt her.

Q. When the *Namur* was hauled off, Did you obſerve her afterwards edge down again?

A. No.

Q. Did he lie ſo, as that he could fire any of his Quarter-Guns at the Enemy?

A. I believe he might have fired his Quarter-Guns at the *Real.*

Q. What Diſtance of Time was there between the *Namur*'s firſt engaging the *Real*, and your beginning to engage the *Hercules?*

A. About Six or Seven Minutes.

Aſked by the Priſoner,

Q. What Ship was it that drove the *Hercules* out of the Line?

A. The *Dorſetſhire.*

Q. Did you ſee any other Ship fire at her, when ſhe went out of the Line?

A. No:—No Ship fired at her, but the *Dorſetſhire.*

Q. Did you ſee the *Marlborough* fire at her?

A. No.

Q. Did you ſee the *Namur* fire at her?

A. No: I never ſaw the *Marlborough* or *Namur* fire at her the whole time.

Q. Did you ever obſerve our Main-maſts ſhot through?

A. Yes: Juſt before the *Marlborough*'s Maſts were carried away, I obſerved our Main-maſt to be ſhot through; and I acquainted you with it.

Court aſked,

Q. Where did that Shot ſtrike your Maſt?

A. Juſt abaft the Paunch, and went through.

Q. Was it a large Shot?

A. I believe a Twelve or Eighteen Pounder. It made a large Hole.

Q. What Shrouds had you ſhot away?

A. Five;—Three on one Side, and Two on the other; all upon the Main-maſt.—The Fore-preventer Stay, and other Rigging, were alſo cut.

Q. Where were the Shrouds parted?

A. Near to the Gunnel.

Q. Did the Shot go directly through the Main-maſt?

A. Yes; directly through.

Priſoner asked,

Q. Did you obſerve any Grape-ſhot, or Double-headed Shot, ſtrike the Ship?

A. Yes: After the Whole was over, I ſaw a Grape-ſhot that came into the Quarter-Gallery.

Q. When came the Double-headed Shot in?

A. I can't tell the Time.

Court aſked,

Q. Was you never ſhewn the Place, where the Double-headed Shot came through?

A. I can't ſay.

Q. Was nobody wounded thereby?

A. I was informed there was.

Q. You ſay, You ſaw a Grape-ſhot in the Quarter-gallery: How far did it enter into the Side?

A. About the Length of my Finger: It was about a Pound Weight.

Q. Do you remember a Shot come in at the Quarter-deck?

A. Yes: While we engaged the *Hercules* in the firſt Part of the Engagement, it came thro' the Quick-work, and took the Sheer-rail, and Timber-head, on the other Side.

Q. How far might the *Hercules* be from the *Real*, when her Main-topſail Yard was gone, and ſhe bore away, to go under the *Real*'s Quarter?

A. Better than Three Cables Length.

Q. Did any of the *Real*'s Shot, after you engaged her cloſely, do you Execution, and ſtrike the Ship?

A. I don't remember that any did; ſhe fired but ſlowly; but I obſerved her Shot to go over us.

Then he withdrew.

Richard Aiſcough, Surgeon's Mate of the *Dorſetſhire*, called in, and ſworn.

Q. How many Men were killed on board the *Dorſetſhire*, during the Engagement?

A. One killed on the Spot; Five brought down, who died ſoon after being dreſſed; Two of them had their Thighs ſhot off.

Q. How many Men were wounded, and recovered?

A. Nineteen—Three of them loſt Limbs—We had occaſion to take off Seven Limbs that Day.

Q. By

Q. By what kind of Shot do you apprehend they were killed and wounded?

A. I can't ſay.

Q. Were any wounded by Muſquet-ſhot?

A. No; I apprehend it to be by great Shot, and Splinters.

Then he withdrew.

Solomon Middelton, Foremaſtman on board the *Dorſetſhire*, called in, and ſworn.

His Depoſition was read, as follows:

Solomon Middelton, *Mariner*, *belonging to the* Dorſetſhire, *ſworn*, *depoſeth*;

THAT, in the Engagement aforeſaid, he was quartered to the Rigging abaft: When Admiral *Matthews*, and the *Marlborough*, bore down to the *Real*, we bore down to the Ship aſtern of her (which I have been told was the *Hercules*): When we came within about Half a Mile of her, ſhe began to fire upon us: The Captain ordered the Top-gallant Sails to be furled; and, hauling the Wind, brought our Broadſide to bear upon the *Hercules*, whom we engaged for an Hour, or thereabouts; when ſhe ſheered off from us, with her Main-topſail Yard ſhot down: She ſoon hauled her Wind again; and we kept firing upon her, until ſhe got up pretty near the *Real*'s Lee-Quarter: I was then with *Chriſtopher Todd*, and others, ſplicing our Running-Rigging, which was ſhot; and, at the time the *Marlborough*'s Maſts went away, we were going into the Main-chains, to knot Three of our Main-ſhrouds, and to ſplice the Main-top-maſt and Main-top-gallant Back-ſtays: After that was done, we went into the Larboard Main-chains, and ſtoppered Two Main-ſhrouds that were ſhot there; then the Main-runners: And, very ſoon after, the Captain ordered the Helm aweather, filled the Headſails, and bore down ahead of the *Marlborough*, and very near the *Real*, whom we engaged for a Quarter of an Hour, or thereabouts; when ſhe bore away before the Wind, with her Stern right to us, which we fired into for ſome time, when we brought to, to avoid falling to Leeward of Five Sail of *Spaniſh* Ships that were coming up. Juſt after we brought to, the *Anne Galley* Fireſhip came down ahead of us; our Captain hailed her, to know if we could aſſiſt her; we underſtood her, No, no; but ſoon after, ſeeing her go down to the *Real*, our Captain ſent the Barge after her; but ſhe blew up, and their Men came aboard in their own Boats: Soon after, the Four or Five Sail of the Enemy hauled their Wind; and the headmoſt came up, and engaged us for about a Quarter of an Hour, when Admiral *Mathews* wore Ship, and run between us and her: We ſtopped Firing, till he was paſt us; then wore after him, engaging thoſe Ships, as we paſſed them. He ſays, The Captain behaved in a very good, and a very bold manner, all the while: The Marines being very backward, I ſaw the Captain ſeveral times force them up to the Side, to fire.

Solomon Middelton.

Sworn by me,
Geo. Atkins, Deputy Ju. Adv.

And he declared the ſame to be true.

Q. Where was you quartered?

A. To the Main-rigging.

Q. Was you within Muſquet-ſhot of the *Hercules*?

A. Not at firſt; but when we engaged the *Hercules* and *Real* together, I believe we were.

Q. At what Diſtance was you then from thoſe Two Ships?

A. Within a Cable's Length and a Half.

Q. Did the Enemy fire Muſquets at you?

A. I can't ſay; but we fired Muſquets at them.

Q. How far do you think a Muſquet can carry?

A. About Sixty Yards.

Q. When you bore down ahead of the *Marlborough*, what Diſtance was you from the *Real*?

A. Within a Cable and Half, or Two Cables Length.

Q. Did your Marines fire, when you engaged the *Real* and *Hercules* together?

A. I can't be certain whether they did, or no.

Q. How many of your Main-ſhrouds were ſhot?

A. Five.

Q. What o'Clock was it, when your Maſt was wounded?

A. It was near Three o'Clock.

Q. How far did the *Hercules* run, when ſhe bore away, before ſhe hauled her Wind again?

A. About a Cable's Length, or a Cable and a Half.

Q. Did you, while ſhe was Bearing away, keep edging down after her?

A. Yes; under our Three Topſails.

Q. How did the Admiral bear, when you firſt engaged?

A. Right ahead; for I could ſee her out of each Gangway.

Q. Did you ſee her Three Maſts in One?

A. I can't be certain as to that.

Q. What Rigging had you hurt?

A. Several of the Halliards and Braces, and other Rigging, beſides the Five Shrouds.

Q. What time did you take to repair your Rigging?

A. About Half an Hour.

Q. Do you think you was within Point-blank of the *Hercules*, when you firſt engaged?

A. Yes.

Q. How near was you then?

A. Within about Half a Mile.

Q. Did you ſee your Shot fly over the Enemy?

A. Yes; I ſaw many go over the Enemy.

Q. Did the Enemy's Shot reach you?

A. Yes: I ſaw many go through our Sails, and over us.

Q. Did any Shot ſtrike your Hull?

A. I did not take Notice.

Q. At what time did the Shot take the Barricado?

A. In the Beginning of the Action.

Q. Where did it come in?

A. Between the Main ſhrouds.

Q. Do you know of any Muſquet-ſhot that ſtruck you?

A. No.

Q. Did you hear of any Muſquet-ſhot being taken out of the Hammocks?

A. No.

Q. Did you obſerve, that any Muſquet-ſhot had been through your Sails?

A. No; I did not.

Q. Do you know any thing of a double-headed Shot coming on board you?

A. No.

Q. Were the Topſail-ſheets, or Topſail-ties, ſhot?

A. I heard afterwards, that one of the Fore-topſail-ſheets was ſhot.

Q. Was it before or after you began to engage the *Hercules*, that the *Namur* hauled off, to let the *Marlborough* come in, and engage the *Real?*

A. I believe it was Eight or Ten Minutes after we began to engage.

Q. Are you poſitive, that when you firſt began to engage, you was in a Line with the *Namur?*

A. I am poſitive of it; for when the *Namur* hauled up, to clear herſelf of the *Marlborough*, we were then to Leeward of her, and opened her about a Point upon our Weather-Bow.

Q. Was you as near to the *Hercules*, when you began to engage, as the *Namur* was to the *Real*, before ſhe hauled off?

A. No; not quite ſo near.

Q. In what Poſition was the *Hercules* then, with regard to the *Real?*

A. Rather to Leeward of the *Real*, and about Half a Mile from her.

Q. How long did you engage the *Hercules?*

A. About an Hour by herſelf, before ſhe run under the *Real*'s Stern.

Q. How was the *Marlborough* then, with regard to you?

A. Upon our Lee-Bow.

Q. What Sail did the *Hercules* engage you under?

A. Her Three Topſails; and when ſhe ſheered off, ſhe dropt her Foreſail.

Q. What Sail was you then under.

A. Our Three Topſails.

Q. Were they full, or aback?

A. They were full.

Q. Did you fore-reach upon her, or keep your own with her?

A. We kept our own.

Q. Did you ſee the *Real*'s Topſails then?

A. Yes.

Q. Were they full, or aback?

A. I am certain her Main-topſail was aback; but the *Hercules*'s was full.

Q. Did you obſerve any other Ship, beſides you, fire at the *Hercules?*

A. Yes; the *Eſſex* did.

Q. What Poſition was ſhe then in?

A. About Two Cables Length, upon our Weather-Quarter.

Q. Did you obſerve her Shot reach, or fall into the Water?

A. I did not obſerve them.

Q. When you lay fitting your Rigging, Where was the *Marlborough?*

A. Between us and the *Real.*

Q. Had you any Rigging ſhot, that hindered you from bracing your Yards, or hauling your Sails?

A. Only the Main-brace.

Q. Where was the *Hercules?*

A. She was to Leeward of the *Real*; and I never ſaw her afterwards.

Q. Did any Shot reach you, at that time, over the *Marlborough*, from the *Real?*

A. No; I did not ſee any.

Q. Were your Sails aback, when the *Marlborough* dropt in between you and the *Real?*

A. Yes; we were under our Topſails, and they were aback.

Q. If you had then ſet your Foreſail, and ſhivered your Afterſails, could you not have wore round, and gone aſtern of the *Marlborough?*

A. No.

Q. What was you doing, at the Time your Sails were aback?

A. Repairing our Rigging.

Q. Did you obſerve the *Marlborough*, when ſhe loſt her Maſts?

A. Yes.

Q. How did ſhe bear then?

A. About a Point and a Half upon Lee-Bow.

Q. Could you not have wore then, and gone to her Aſſiſtance?

A. Yes; I think we could.

Q. When the *Marlborough* loſt her Maſts, How did the *Real* bear from her?

A. She was before the *Marlborough*'s Beam.

Q. Did you open the *Real* ahead of the *Marlborough?*

A. Yes; after our Rigging was repaired; but, before that, we kept our Sails aback, to keep the *Real* open aſtern of the *Marlborough* as long as we could.

Q. Did you obſerve at what time the *Spaniſh* Admiral was diſabled?

A. No.

Q. Did you obſerve him at all diſabled?

A. Yes: — I ſaw his Fore-topſail Yard half Maſt down, and hung by the Lifts; and the Main-topſail Yard down upon the Cap.

Q. At

Q. At what time did you firſt obſerve that?

A. About Half paſt Two o'Clock.

Q. At what time did the *Hercules* firſt bear away from you?

A. About Half-paſt Two.

Q. Were any Ships firing at the *Marlborough* at the Time you was repairing your Rigging?

A. I did not obſerve any but the *Real*.

Q. In what Poſition was the *Marlborough* from you, when you was repairing your Rigging?

A. Pretty near abreaſt of us; and ſoon after ſhe fell aſtern.

Q. How could ſhe, if your Topſails were aback?

A. They were not then aback; ſhe was abreaſt of us about a Quarter of an Hour; and then our Sails were filled, and we ſhot ahead.

Q. Did you obſerve the *Hercules* to be diſabled?

A. Her Main-topſail Yard was down, and her Fore-topſail Yard hung by the Lifts.

Q. When the *Marlborough* was between you and the Enemy, Did they fire at her?

A. Yes.

Q. Did any of the Shot come over your Ship?

A. I am not ſure whether they did or not.

Priſoner aſked,

Q. Do you remember the Main-bowline to be ſhot at the firſt of the Engagement?

A. Yes; and ſeveral Laniards at the Mizen-ſhrouds, and other Rigging.

Then he withdrew.

Chriſtopher Todd, Boatſwain's-Mate of the *Dorſetſhire*, called in, and ſworn.

His Depoſition was read, as follows:

Chriſtopher Todd, *Boatſwain's-Mate, on board the ſaid Ship, ſworn, depoſeth*;

THAT, in the Engagement aforeſaid, he was quartered to the Rigging abaft; that when Admiral *Mathews*, and the *Marlborough*, bore down to the *Real*, they bore down to the Ship aſtern of her, called the *Hercules:* When we came within about Half a Mile of her, ſhe began to fire: Then the Captain ordered to furl Top-gallant Sails; and ſoon after, as I remember, hauled the Wind, and brought our Broadſide to bear on the *Hercules*, whom we engaged for an Hour, or thereabouts; when ſhe ſheered from us, with her Main-topſail Yard ſhot down: She ſoon hauled her Wind again, and we kept Firing upon her, until ſhe got pretty near the *Real*'s Lee-Quarter: I was then, with others, ſplicing our Running-Rigging, which was ſhot; and very well remember, that, juſt at the time the *Marlborough*'s Maſts went away, we were going into the Main chains, to knot Two of our Main-ſhrouds, to ſplice the Main-topmaſt, and Main-top-gallant Backſtays; then went into the Larboard Main-chains; ſtoppered Two Main-ſhrouds, that were ſhot, and the Main-runners: Soon after, the Captain ordered the Helm aweather, filled the Head-Sails, and bore ahead of the *Marlborough*, very near the *Real*, whom we engaged for a Quarter of an Hour, or thereabouts; when ſhe bore away before the Wind, with her Stern right to us, which we fired into for ſome time, till we were forced to bring to, to avoid being to Leeward of Five *Spaniſh* Ships that were coming up: After we brought to, the *Anne Galley* Fireſhip came down ahead of us; our Captain hailed, to know if we could be of any Service to her; we underſtood, No, no; but, ſeeing her go down to the *Real*, our Captain ſent the Barge after her; but ſhe blew up, and her Men came aboard in their own Boats. The Five Sail before-mentioned now hauled their Wind; and the headmoſt came up, and engaged us, for about a Quarter of an Hour: Admiral *Mathews* wore Ship; run between us and her: We ſtopped Firing till he was paſſed; then wore after him, and engaged the Five Sail as we paſſed by them. He ſays, The Captain, to all Appearance behaved incomparably well, always encouraging the Ship's Company, and ſhewing them a good Example.

Chriſtopher Todd.

And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Main-Rigging.

Q. Did you engage the *Hercules* in a Line with the Admiral?

A. Yes.

Q. What Diſtance was you from the *Hercules?* Was you within Gun-ſhot?

A. I think we were within Gun-ſhot; we were about Half a Mile from her.

Q. How long did you engage her?

A. About an Hour before ſhe bore away.

Q. What did you do then?

A. We bore away after her.

Q. How was the Wind?

A. Upon our Beam; and we engaged under our Top-ſails.

Q. Did the *Hercules* bear away quite out of the Line?

A. After ſhe went under the *Real*'s Lee-Quarter, ſhe went to Leeward; and never returned again.

Q. What did you do then?

A. Engage the *Real*.

Q. At what Diſtance?

A. About Four Cables Length.

Q. Had the Admiral's Boat been then on board you?

A. No:—It was a little while after.

Q. What was you doing, when the Admiral's Boat came on board you?

A. Securing our Rigging and Main-maſt.

Q. How was the *Marlborough* then from the *Real?*

A. A little before her Beam.

Q. How

Q. How was you then from the *Marlborough?*

A. We were abreaſt of her.

Q. Could you fire then at the *Real?*

A. No.

Q. Do you know what Meſſage was ſent from the Admiral?

A. No:—But, ſoon after, I heard the Captain ſay, He would go down, and aſſiſt the *Marlborough*; and we immediately after bore down, and engaged the *Real.*

Q. When you engaged the *Real* a Second time, What Diſtance was you from her?

A. About Two Cables Length.

Q. How long did you engage her then?

A. About a Quarter of an Hour; and then ſhe bore away; and the Captain ordered us to load with Grape-ſhot; and I was ſent down to tell them ſo.

Q. Why did you not engage her longer?

A. We engaged her while her Stern was to us, till we ſaw the Shot would do no Execution.

Q. What did you do after the *Real* was out of Gun-ſhot.

A. We lay to.

Q. Had the *Real* bore away, when you went down about loading the Guns?

A. Upon the *Real*'s Bearing away, with her Stern to us, the Captain ordered the Guns to be loaded with Grape-ſhot, to fire into her Stern, and rake her.

Q. What Diſtance was you then from the *Real?*

A. About a Quarter of a Mile, or Two Cables Length.

Q. Did you fire Grape-ſhot before the *Real* bore away?

A. No:—When her Stern was to us, we thought Grape-ſhot would be of more Uſe to fire into her Stern, than when her Broadſide was to us.

Q. Do you think Grape-ſhot reached her?

A. Yes.

Q. At what time of the Day were the Marines ordered down to man the Guns?

A. I can't tell.

Q. As you was quartered at the Rigging, What Rigging had you ſhot away?

A. Five Shrouds.

Q. Was that while you engaged the *Hercules?*

A. One Main-ſhroud was gone when we engaged the *Hercules*, One Main-runner, Three Laniards of the Mizen-ſhrouds on the Starboard-ſide.

Q. Was any more ſtanding Rigging gone?

A. No more; except the Topping-lift of the Mizen-yard, and the Middle-ſtayſail-haliards.

Q. Did you ſtopper any of thoſe Shrouds at the time you obſerved them hurt, or did you ſtay till after you lay by?

A. We ſtoppered them immediately; and repaired the Rigging, as we obſerved it wanted it.

Q. Did your Ship roll during the Engagement?

A. Yes; pretty much.

Q. Did you take in any Water?

A. Yes; ſome was taken in upon the Lower-deck.

Q. Did you think your Main-maſt in Danger, when it was ſhot through?

A. Yes, I did:—We had ſet up Runners and Tackles, before we began to engage, in order to ſecure the Maſt.

Q. Had you any Back-ſtays ſhot?

A. Yes, the Main-topmaſt and Top-gallant Back-ſtays.

Q. What other running Rigging was ſhot?

A. The Main Bowline, the Mizen-ſtayſail-haliards, and the Starboard Main-brace, twice ſhot.

Q. Had you Preventer-braces reeved?

A. Yes; I reeved ſome myſelf, a Day or two before the Engagement.

Q. Was you at any time ſo diſabled in your Rigging, as to prevent the Ship's Working?

A. I can't ſay.

Q. In the Ship's Rolling, was the greateſt Rolling to Windward, or to Leeward?

A. I believe, rather to Leeward; but ſhe rolled very much both Ways.

Q. Did you, at any time of the Engagement, haul up from the Enemy?

A. Never, to my Knowlege.

Q. Was there any Alarm of Powder not being filled?

A. Yes:—Upon the Admiral's Meſſage, the Captain ordered the Helm aweather, and bore away; but, upon the Report of Powder not being filled, we brought to again; and the Captain ſent for the Gunner; who told him, There was Powder enough filled: Then the Captain ordered the Helm aweather immediately, and bore away again.

Q. What was the Occaſion of the Alarm of no Powder being filled?

A. I can't tell.

Q. When you did bear away again, where did you go?

A. We bore down ahead of the *Marlborough*, and engaged the *Real.*

Q. Could you not have gone aſtern of the *Marlborough?*

A. No; I think we could not.

Q. When you run ahead of the *Marlborough*, to engage the *Real*, where was the *Hercules?*

A. She was gone ahead of the *Marlborough*, and to Leeward of her own Admiral; and bore away out of the Line.

Q. How far was the *Hercules* from the *Real* at that time?

A. About a Mile ahead of her, and to Leeward withal; and never came into Action again.

Q. Did you obſerve the *Real* to haul up, after you forced her before it?

A. No; I never obſerved, that ſhe did.

Q. Did

Q. Did the *Hercules* haul up, after her Bearing away, when you firſt engaged her?

A. Yes, ſhe went under the *Real*'s Quarter.

Q. How long did ſhe lie there?

A. She lay there till about the Time the *Marlborough*'s Maſts were loſt; and then went away ahead of her Admiral, and to Leeward, out of the Line.

Priſoner asked,

Q. Do you remember any double-headed Shot, or Grape-ſhot, coming on board?

A. I remember a double-headed Shot came in, and took away the Bit-piece that ſupported the Gallows.

Court asked,

Q. What Ship was you engaging, when that double-headed Shot came in?

A. To the beſt of my Remembrance, it was when we firſt engaged the *Real* and *Hercules*, about an Hour after we had engaged the *Hercules* alone.

Q. Did that Shot come through the Side, or over the Gunnel?

A. I can't ſay:— I think it might come over the Gunnel.

Q. Had the double-headed Shot both its Heads on?

A. With the Force it ſtruck the Gallows, one of the Heads fell off.

Q. Do you know any thing of any other double-headed Shot?

A. I don't remember:— There was a Shot came through the Quarter, under the Quarter-deck; but I can't ſay what it was.

Then he withdrew.

Thomas Limbery, Midſhipman on board the *Dorſetſhire*, called in, and ſworn.

His Depoſition was read, as follows:

Thomas Limbery, *late a Midſhipman on board his Majeſty's Ship the* Dorſetſhire, *at the Time of the late Engagement off* Toulon, *between his Majeſty's Fleet, and the Combined Fleet of* France *and* Spain, *on the* 11*th of* February, 1743, *maketh Oath*;

THAT, at the Time of the ſaid Engagement, the *Dorſetſhire* was the next Ship aſtern of the *Marlborough*, in the Line of Battle: That he was quartered upon the *Dorſetſhire*'s Quarter-deck, to look out for Signals on board the Admiral's; and to acquaint the Captain's Clerk with all Tranſactions: That Captain *Burriſh* being very weak, having had the Gout for a long while, and then hardly able to ſtand, he kept this Deponent by him, upon the Arm-Cheſt, on the Starboard Side, to inform him, as well as the Clerk, who was juſt by at the Bittacle.

That, in the Morning of the ſaid Day, the Admiral made the Signal to engage: That the *Dorſetſhire* kept Bearing down with the Admiral, and the *Marlborough* at a proper Diſtance, until paſt One of the Clock; then the Admiral and *Marlborough* bore down to the *Spaniſh* Admiral in the *Real*; and both of them engaged her for about a Quarter of an Hour; and then the *Marlborough* ſhooting between the *Namur* and *Real*, the *Namur* hauled her Wind; that the *Dorſetſhire* bore down with the *Namur* and *Marlborough*: And this Deponent ſaw the afore-mentioned Proceedings of the *Namur* and *Marlborough*, whilſt the *Dorſetſhire* was ſo Bearing down to the Ship next aſtern of the *Real*, which was near Half a Mile diſtant from her; and, he is ſince informed, was called the *Hercules*: That the *Dorſetſhire* went down within about Half a Mile of her; and then the *Hercules* fired ſeveral Shot over the *Dorſetſhire*; upon which, Captain *Cole* of the Marines ſaid, Surely, it is time for us to fire: Captain *Burriſh* then ordered the Top-gallant Sails to be furled, hauled up the Foreſail, and hauled his Wind; Admiral *Mathews* being then right ahead, or rather on the Weather-Bow; the *Marlborough*, on the Lee-Bow; and the *Eſſex* (the Ship next aſtern of the *Dorſetſhire*, in the Line) a little on her Weather-Quarter: In this Poſture the *Dorſetſhire* began to engage the *Hercules*; and, in a few Broadſides, ſhe killed Two Men upon the Quarter-deck of the *Dorſetſhire*, and broke another Man's Leg; and this Deponent obſerved moſt of her Shot to go over the *Dorſetſhire*, and very few to fall ſhort: That the *Dorſetſhire* continued engaging the *Hercules* for more than an Hour; and then ſhe bore away for a few Minutes before the Wind, her Main-topſail Yard being come down on the Cap; but then hauled her Wind again, and went under the *Real*'s Lee-Quarter: By this time, the *Dorſetſhire* was ſhot further ahead; and, being about Three-quarters of a Mile from the *Real*, began to engage her upon her Weather-Quarter, the *Marlborough* being upon her Bow: Admiral *Mathews* was at that time on the *Dorſetſhire*'s Weather-Bow; the *Marlborough*, Two Points on her Lee-Bow; and the *Real*, about Three Points upon her Lee-Bow: That the *Dorſetſhire*'s Main-topſail was then kept ſhivering, and, it being leſs Wind, ſhe ſometimes fell off, ſo that her After-Guns could not be pointed upon the *Real*. Captain *Burriſh* then ordered Mr. *Cornbill*, who paſſed the Word in the Starboard Gangway, to tell the Officers upon the Lower-deck, to fire ſometimes at the *Hercules*, and ſometimes upon the *Real*. Some time after this, the *Marlborough* loſt her Main and Mizen Maſts: That the *Dorſetſhire*'s Fore-topſail was then backed, and the Mizen hauled out, in order to drop nearer to the *Marlborough*, and to keep the *Real*'s Quarter open; which anſwered for a little time; but then the *Real* was ſhut quite in with the *Marlborough*, ſo that the *Dorſetſhire* could not fire at her: The *Dorſetſhire*'s Rigging was then overhaul'd as faſt as poſſible; and, in about Half an Hour, got into pretty good Order, as well as ſome Guns that had loſt their Trucks below. About this time, Lieutenant *Bentley* came on board the *Dorſetſhire*;

and told Captain *Burriſh*, That the Admiral wondered he did not go down to the *Marlborough*; and that the Admiral would have him go directly: The Captain ſaid, He wiſhed he knew what the Admiral would have him do, and he would do it; and asked Mr. *Bentley*, If he thought Bearing down ahead of the *Marlborough*, and Engaging the *Real*, would be agreeable: Mr. *Bentley* ſaid, The Admiral only told him, to tell the Captain, to bear down to the *Marlborough*: Captain *Burriſh* thereupon ordered the Helm aweather directly; and ordered the Jib to be hoiſted, and the Top-gallant-ſails to be looſed. Quickly afterwards, Lieutenant *Bentley* called again along-ſide of the *Dorſetſhire*; and told Captain *Burriſh*, It was the Admiral's Order, That he ſhould engage the *Real*; and then the Firſt Lieutenant, Mr. *Page*, ran up the Gangway to Captain *Burriſh*, and told him, There was no Powder filled: The Captain was greatly ſurpriſed, and, with his Speaking-Trumpet, called to Mr. *Bentley*, to tell him: At the ſame time he ſent for the Gunner; and, in a great Paſſion, asked him the Meaning, Why there was no Powder filled? The Gunner made Anſwer, There was no want of Powder; for that he had enough to go along-ſide what Ship he would. Upon the Lieutenant's telling the Captain there was no Powder filled, the Captain ordered the Helm aſtarboard; but, in a few Minutes, the Gunner having ſatisfied him there was no want of Powder, the Captain ordered the Helm aweather again; and then ſent for all the Lieutenants, and told them, to be ſure to have ſpare Cartridges of Powder upon each Deck, for that he was going along-ſide the *Real*: He alſo deſired, they would obſerve the Five *Spaniſh* Ships aſtern were coming up very faſt, and none of our Ships coming down to back us; therefore, if he ſhould be obliged to leave the *Marlborough*, they might anſwer for his Conduct: But he did not hear what Anſwer the Lieutenants made thereto. By this time the *Dorſetſhire* was got pretty near the *Real*; and the Lieutenants were ordered to their Quarters; and, quickly after, the *Dorſetſhire* being within a Quarter of a Mile, or leſs, of the *Real*, the Captain ordered every body to fire away; which was accordingly done, for about a Quarter of an Hour: And then the *Real* bore quite away, and turned her Stern to us; which we continued to fire into, till ſuch time our Shot would do no Execution; the *Dorſetſhire* being obliged to bring to, or ſhe would have been to Leeward of the Five *Spaniſh* Ships that were coming up; and, as it was, this Deponent is of Opinion, They might have weathered the *Dorſetſhire*, if they had not bore away towards the *Real*. Juſt when the *Dorſetſhire* brought to, the *Marlborough*'s Lieutenant came along-ſide; and ſaid, Several of their Officers and Men were killed and wounded; and deſired Aſſiſtance: Captain *Burriſh* ordered the Barge out directly, the Pinnace being ſhot and ſunk aſtern; but, before ſhe put off, the *Anne Galley* Fire-ſhip came near the *Dorſetſhire*; and Captain *Burriſh* hailed her; and asked, If ſhe was going to the *Real*, and if we could be of Service to her: But we could not underſtand what Anſwer they made; but thought, they ſaid, No, no: That, very ſoon after, ſhe bore down directly upon the *Real*, and the *Dorſetſhire*'s Boat was ſent away to ſave her Men; which was all the *Dorſetſhire* could do: but, before the Boat got to the Fireſhip, ſhe blew up, and her Men came on board the *Dorſetſhire*, in their own Boats. Soon afterwards, the headmoſt of the Five *Spaniſh* Ships engaged the *Dorſetſhire* (the *Marlborough* by this time being towed to Windward of the Line); and ſhe returned her Fire for about a Quarter of an Hour; and then Admiral *Mathews* wore, and ran between us and the Enemy; the *Dorſetſhire* left off Firing whilſt he paſſed her, and then wore Ship after him, and engaged the Five Sail of *Spaniſh* Ships in paſſing each other; they ſtanding to the Southward, and the *Engliſh* Ships to the Northward; and that Day-light was juſt cloſed, when Firing was left off.

Thomas Limbery.

Sworn, this 31ſt *Auguſt*, 1745. before me,
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Quarter-deck, to look out for Signals.

Q. How did you bear down at firſt?

A. We bore down after the *Marlborough*, at a proper Diſtance, in a Line abreaſt; and we began to fire, ſoon after the Admiral fired at the *Real*.

Q. What time did you begin to engage?

A. About Half paſt One.

Q. How long was that after the Admiral began?

A. About a Quarter of an Hour.

Q. Was the *Hercules* in a Line with the *Real*? And at what Diſtance?

A. She was in a Line; and about Half a Mile diſtant.

Q. Was ſhe right aſtern?

A. Yes, ſhe was right aſtern.

Q. Was you in a Line with Admiral *Mathews*?

A. Yes, when we began to engage; or he was rather upon our Weather-Bow: The Admiral having then hauled off, upon the *Marlborough* running in to Leeward of him.

Q. Was you in a Line with the Admiral, when he began to engage?

A. No; we were Bearing down when the Admiral began to engage; but we were in a Line with him when we began to engage.

Q. Was you as near the *Hercules*, when you began to engage, as the Admiral was to the *Real*, when he began to engage?

A. Yes,

A. Yes, I believe we were.

Q. What Diſtance then was you from the *Hercules?*

A. About Four Cables Length, and as near to the *Hercules*, as the *Namur* was to the *Real*, when ſhe began to engage.

Q. Was you within point-blank Shot, when you began to engage the *Hercules?*

A. Yes, I think ſo.

Q. Do you think that a Gun ſquare in the Carriage, with the Ship upright, would have ſtruck the *Hercules?*

A. Yes.

Q. Did the *Hercules* Shot come over you, before you began to engage her?

A. Yes.

Q. Did you ſee no Shot take the Water?

A. None from the Enemy; but I ſaw ſeveral from ſome of our Ships; which appeared to me to be from the *Eſſex*.

Q. Did you ever engage the *Hercules* and *Real* at the ſame time?

A. Yes: We engaged the *Hercules* about an Hour alone; and afterwards, engaged her and the *Real*, with our foremoſt Guns upon the *Real*, and our aftermoſt upon the *Hercules*.

Q. How long did you engage both Ships together?

A. About Three-quarters of an Hour.

Q. At what Diſtance was you then from the *Real?*

A. Better than half a Mile.

Q. Did you engage the *Real*, before the Admiral ſent a Meſſage to the *Dorſetſhire*?

A. Yes; we engaged her aſtern of the *Marlborough* for ſome time before.

Q. Do you think there was Occaſion for the Admiral to ſend that Meſſage?

A. He never ſent that Meſſage, till we were abreaſt of the *Marlborough*, lying to, to mend our Rigging, with the *Marlborough* between us and the *Real.*

Q. Do you think you was to Windward of the *Namur*, during any Part of the Action?

A. No; never after we began to engage.

Q. How long did you lie without Firing?

A. About Half an Hour.

Q. How did the *Marlborough* bear from you then?

A. Upon our Beam.

Q. Did the Enemy fire at the *Marlborough* then?

A. Yes; the *Real* did.

Q. Did you ſee any Shot come over the *Marlborough?*

A. No: I don't remember that I did.

Q. How far do you imagine the *Dorſetſhire* was to Windward of the *Marlborough*, when the *Marlborough* was between you and the *Real?*

A. About Two Cables Length.

Q. Was you ſo diſabled in the Rigging at any time, that you could not work the Ship?

A. No.

Q. Did you ever open the *Real* ahead of the *Marlborough?*

A. Yes; we engaged her ahead of the *Marlborough*, till ſhe bore away.

Q. How far might you at any one time ſee the *Namur* upon your Weather-Bow?

A. When we engaged the *Real* ahead of the *Marlborough*, the *Namur* was about Four Points upon our Weather-Bow.

Q. How did ſhe bear from you, juſt before the *Marlborough* loſt her Maſts?

A. About Two Points upon our Weather-Bow?

Q. Did you ſee the *Marlborough*, when ſhe loſt her Maſts?

A. Yes.

Q. What was you doing then?

A. Engaging the *Real* and *Hercules* together.

Q. How did you lie with the *Marlborough* then?

A. The *Marlborough* was about a Point on our Lee-Bow.

Q. At what Diſtance?

A. About Two Cables Length.

Q. What became of the *Hercules* then?

A. Juſt after the *Marlborough* loſt her Maſts, ſhe bore away to Leeward, and I never ſaw her afterwards.

Priſoner aſked,

Q. How often did you ſee the Gunner on the Quarter-deck?

A. But once.

Q. Did you ever ſee any Ships firing aſtern of the *Dorſetſhire*, while we engaged the *Hercules?*

A. Yes.

Q. Did you perceive their Shot go home or fall ſhort?

A. They fell ſhort; they croſſed one another.

Q. Did you ever ſee or hear the Gunner ſhew me, or ſay any thing to me, about thoſe Ships?

A. Yes: The Gunner ſaid, pointing to the Ships to Windward, and aſtern withal, See, Sir, There's Fighting! There's Fighting!

Q. What Ship did he ſpeak of then?

A. I think ſome of Mr. *Leſtock*'s Diviſion, who were then firing at the Five Sail of *Spaniſh* Ships coming up.

Q. Upon which Side did you ſee thoſe Ships?

A. Upon the Weather-Quarter.

Q. How did Mr. *Leſtock*'s Diviſion bear from the Five *Spaniſh* Ships coming up?

A. About Two Miles, or Two Miles and an Half, to Windward of thoſe Five Ships.

Q. Could they have prevented the Enemy from joining the *Real?*

A. I can't tell.

Q. Do you remember where the Gunner was, when he pointed at thoſe Ships?

A. Upon the Quarter-deck.

Court aſked,

Q. Don't you remember, that the Gunner ſaid to the Captain, Sir, We are not near enough?

A. No;

A. No; I never heard him ſay ſo.

Q. Did you hear all he ſaid?

A. I heard him ſay no more than what I have already ſaid.

Q. Did you ſee the Gunner, at any other time, upon the Quarter-deck?

A. No.

Q. Did the Gunner ſay, There's Fighting! or, Here's Fighting?

A. I am poſitive he ſaid, There's Fighting, Sir! There's Fighting: To which the Captain anſwered, Ay, there's Fighting indeed, Gunner!

Q. What Diſtance might the *Eſſex* be from you, when you began to engage?

A. About Two Cables Length to Windward.

Q. How near was you to the Captain, when that paſſed between him and the Gunner?

A. I was then cloſe to the Captain.

Q. Did you ever hear the Gunner ſay, that he whiſpered the Captain, when he told him, he was not near enough?

A. No.

Q. Have you ever heard the Gunner, or any body elſe, ſay, at any time ſince the Action, That he ſpoke any other Words to the Captain than what you have mentioned?

A. No.

Priſoner. My Maſter, and the Midſhipman, who paſſed the Word in the Starboard-Gangway, being both dead, is a great Loſs to me; as they might have been able to have anſwered to many things more particularly.

Priſoner aſked,

Q. Did you ſee any double-headed Shot come on board?

A. I ſaw one upon the Quarter-deck, with only one Head; but I don't know how it came there.

Q. Do you remember any Meſſage to me from the Carpenter, to have the Ship pumped?

A. I can't tell who brought the Meſſage; but I heard ſuch a Meſſage brought at the time we lay to, to mend the Rigging.

Q. Did you obſerve ever a Shot to come through the Quick-work?

A. Yes; I ſaw it come through, and take the Sheer-rail and Timber-head, on the other Side, right oppoſite to it.

Q. Do you remember, was that when we engaged the *Hercules* alone, or when we engaged the *Hercules* and *Real* together?

A. It was when we engaged the *Hercules* alone.

Q. At what time do you remember our Main-maſt to have been ſhot through?

A. A little before the *Marlborough*'s Maſts were gone.

Q. Did it go directly through the Maſt?

A. It went directly through, it entered juſt abaft the Fiſh on one Side, and went out juſt abaft the Fiſh on the other.

Q. When you obſerved the *Anne Galley* Fireſhip go for the *Real*, could the *Dorſetſhire* have covered her?

A. No; it was impoſſible: For, when the Barge went away from the Ship towards the Fireſhip, ſhe did not reach half-way, before the Fireſhip blew up:—It was impoſſible for a Ship to wear, before ſhe blew up.

Court aſked,

Q. How long was it before the Fireſhip blew up, after ſhe had paſſed by the *Dorſetſhire?*

A. About a Quarter of an Hour.

Q. What was the Reaſon of your leaving off Firing at the *Real?*

A. Becauſe we had drove the *Real* before the Wind.

Q. How far was you from the *Real*, when the Fireſhip ranged along your Side?

A. About Three-quarters of a Mile.

Q. Was the *Real* put before the Wind by your Shot, before the Fireſhip came along-ſide of you?

A. Yes.

Q. How near was the Fireſhip to the *Real*, before ſhe blew up?

A. Within about Half a Cable, or a Cable's Length.

Q. How many Knots, do you imagine, the Fireſhip went when ſhe was bearing down?

A. About Two Knots, or Two and an Half.

Q. When Captain *Burriſh* hailed the Fireſhip, where was the *Marlborough?*

A. She was aſtern of us, rather upon our Weather-Quarter, with Two Boats ahead, towing her off.

Q. Were all your Boats out, when the Fireſhip blew up?

A. Yes.

Q. How were they employed?

A. The Pinnace was ſunk aſtern, the Barge went to the Fireſhip, the Long-boat was aſtern: I don't know any thing of the Yawl, or whether there was one or not.

Q. What ſunk the Pinnace aſtern?

A. I believe, the Enemy's Shot.

Priſoner aſked,

Q. Do you remember the Yawl's driving aſhore in *Hieres* Road?

A. No; I do not.

Q. Can't you tell what Boats we had on board?

A. No; I don't know, that any were on board.

Priſoner. The Yawl had been damaged, by going aſhore in *Hieres* Bay, and was then upon the Booms, not repaired.

Court aſked,

Q. Did any Ships ſend their Long-boats to protect the Fireſhip againſt the *Spaniſh* Launch?

A. No Long-boat could have gone to cover her.

Q. Is not an *Engliſh* Long-boat as good as a *Spaniſh* Launch?

A. Yes;

A. Yes; if ſhe has a Number of Men in her.

Q. Then, do you think, Longboats diſpatched to the Fireſhip could not have been of Aſſiſtance to the Fireſhip againſt the *Spaniſh* Launch?

A. I think not—For ſhe went down ſo quick, that, I think, they could not have got up to her Aſſiſtance.

Then he withdrew.

Thomas Warner, Midſhipman, on board the *Dorſetſhire*, called in, and ſworn.

His Depoſition was read, as follows; *viz.*

Thomas Warner, *Midſhipman aboard the ſaid Ship, ſworn, depoſeth*;

THAT, in the Engagement aforeſaid, he was quartered at the Three Firſt Guns on the Lower-deck; and, about Eleven *A. M.* was ordered to his Quarters, to ſee every thing clear, and ready for Action: That, upon hauling up our Ports, we ſhipt ſuch Quantities of Water, that we lowered the Foremoſt Port again, and cauſed it to be reported to the Captain; who ordered me to ſend the Men, belonging to that Gun, upon the Quarter-deck. About One o'Clock, we heard Firing ahead of us, but could ſee no Ships engage: Soon after, our Ship, luffing up to the Wind, diſcovered to us the *Real*, about Four Points on our Lee-Bow, and Three-quarters of a Mile diſtant, and a Ship aſtern of her, upon our Beam, about Half a Mile diſtant; which Ship we engaged, upwards of an Hour; when ſhe bore away, with her Main-topſail Yard upon the Cap, and Colours down. Immediately after, ſhe hauled her Wind, and brought to, under the *Real*'s Lee-quarter. We, at the Foremoſt Guns, engaged the *Real* upon her Weather-quarter; and the *Marlborough* did the ſame upon her Beam, till ſhe loſt her Main and Mizen Maſts. Soon after, ſhe dropt aſtern, between us and the *Real*, which prevented our Engaging about Half an Hour; which Time we employed, fetching Shot and Wads to our reſpective Guns, and others, on the ſame Deck, pumping the Ship, having ſhipt ſo much Water at our Lee-Ports, that we were Half Leg deep in the Waterways; and Word was paſſed, that there was Four or Five Foot Water in the Hold. By that time, we had neared the *Real* to about a Quarter of a Mile, when we engaged her about Four Rounds; when ſhe bore intirely away, out of Gun-ſhot. Soon after, came down the *Anne Galley* Fireſhip, ahead of us, and was hailed from our Ship; but what was asked, or anſwered, I know not: But, ſoon after, I ſaw her blown up, within a Cable's Length of the *Real*. The Sun then about Half an Hour high, we ſaw Five Sail of the Rear of the *Spaniſh* Fleet advancing towards us, the Two headmoſt very near together, and about Two Points abaft our Beam, Three-quarters of a Mile diſtant: When they neared us a little more, they began to engage us; which we returned, with the greateſt Vigour, till Admiral *Mathews* wore Ship between us and the Enemy, and, I believe, diſcharged his whole Broadſide as he paſſed them; which was the only Time I ſaw the *Namur*, during the whole Engagement. We wore Ship ſoon after, and engaged the Enemy, as we paſſed them, till almoſt dark; when we, who were forward, received Orders to ſcane our Guns; the Aftermoſt Guns were fought ſomething longer. We ſtood to the Northward, after the Admiral, the enſuing Night.

Sworn by me, *Tho. Warner.*
Geo. Atkins, Deputy Ju. Adv.

And he declared the ſame to be true.

Q. Where was you quartered?

A. On the Lower-deck, at the Three firſt Guns.

Q. When you began to engage, Was you in a Line with the Admiral?

A. I don't know; I did look out of the Ports to Leeward, but I did not ſee the Admiral.

Q. Do you think, when you pointed the firſt Gun, that you was near enough, for the Shot to have gone through both Sides?

A. It would have gone through a Ship's Side, but I can't ſay, whether through both.

Q. At what Diſtance was the *Hercules* then from you?

A. About Four Cables Length.

Q. Were any of your Weather-ports then hauled up?

A. Yes; I did once run out one of the Foremoſt Weather-Guns; but I don't know whether any of the others were run out, during the greateſt Part of the Action.

Q. Did your Ship roll?

A. Yes.

Q. Did the *Dorſetſhire* take in any Water?

A. Yes, a great deal—I was up to the Middle of the Leg in the Waterways; and I heard, that there was Four or Five Foot Water in the Hold.

Q. Did you take in moſt Water to Windward, or to Leeward?

A. To Leeward.

Q. Who told you there was Five Foot Water in the Hold?

A. I can't tell who it was; but I heard ſomebody ſay ſo.

Q. Did you lower your Ports then?

A. Yes, frequently; the Water came in at the Ports.

Q. How many Guns was you quartered to?

A. I had the Command of Three Guns.

Q. How many Rounds did you fire thoſe Guns?

A. About Thirty Rounds.

The Court ſeeming to wonder at that, the Witneſs deſired Leave to recollect; and, after a

ſmall Pauſe, he ſaid, The Guns, where I was, were fired about Fifteen or Sixteen times, each Gun.

Q. What Shot did you load with?

A. Round Shot.

Q. Do you remember any Orders, to load with Grape-ſhot, or double-headed-Shot?

A. I don't remember, that I had any ſuch Orders.

Q. Did the Perſons, quartered at thoſe Guns, ever declare, that they thought they would not do Execution?

A. No; I never heard them: But they declared poſitively, that they thought they did Execution.

Q. Did you ever obſerve the Enemy fire at you?

A. I ſaw the *Hercules*'s Smoke, and that ſhe fired at us.

Q. Did you obſerve any Shot come through the Ship's Side, where you was quartered?

A. No; I did not obſerve any: There was one went through above me, upon the Middle-Gun-deck.

Q. Did you not, in the Firſt Part of the Engagement, think your Ship at too great a Diſtance to do Execution?

A. No—I think, if ſhe had been upon an even Keel, every Shot might have done Execution.

Q. Do you think ſhe could do Execution as ſhe was, in that popling Sea?

A. Yes, I think ſhe could.

Q. Did you lay thoſe Guns down, that you was quartered at?

A. I juſt took the Coin out.

Q. Did you ever take out the Beds?

A. No.

Q. How long was you engaged, before you ſhot up abreaſt of the *Marlborough*, and ceaſed Firing?

A. About an Hour and Three-quarters, or ſomething better.

Q. Did you obſerve, out of any of the Ports, when the *Hercules* bore away to Leeward of the *Real?*

A. Yes.

Q. Did the Enemy fire as warmly at you, as you did at them?

A. Yes, they fired very warmly; I could plainly hear their Shot whiſtle.

Q. Was you then upon the Lower-Gun-deck?

A. Yes.

Q. Did you look out of the Bow-Ports, to obſerve the Poſition of the *Namur*, and the other Ships?

A. Yes; I looked frequently out of the Second Port forward; but I never ſaw the *Namur*, till towards the Evening, when ſhe wore.

Q. How long was you engaged with the *Real*, before the *Marlborough*'s Maſts were gone?

A. About Half an Hour.

Q. At what Diſtance was you then from the *Real?*

A. Within about Four Cables Length.

Q. What Guns did you engage her with?

A. With our Foremoſt Guns; we brought our Two to bear very conveniently on her.

Q. What Guns did you fire at the *Hercules?*

A. I believe the Aftermoſt Guns were fired at the *Hercules*.

Q. How far was the *Hercules* from the *Real*, at that time?

A. About Two Cables Length.

Q. Did you not fire your Guns amidſhips, at that time?

A. I can't tell: I believe thoſe next to me were alſo pointed at the *Real*.

Q. How long, after you began to engage the *Real*, was it, before the *Hercules* bore away?

A. I can't ſay, when ſhe ſhot ahead—I obſerved ſhe was gone, after the *Marlborough* dropt in between us and the *Real*.

Q. How long was it, after you began to engage the *Real*, before you obſerved the *Hercules* to be gone?

A. About Three-quarters of an Hour.

Q. What Time of the Day was it?

A. About Half paſt Three.

Q. What was you doing, then?

A. I don't know—We were then inactive, and then we began to pump.

Q. How long did you lie inactive?

A. About Half an Hour, or ſomewhat more.

Q. When you ſhot ahead of the *Marlborough*, and engaged the *Spaniſh* Admiral, Was his Fire as briſk, as it had been before?

A. No, nothing near ſo briſk.

Q. How long did you engage the *Real* ſingly, before ſhe bore away?

A. Near Half an Hour—we fired about Three or Four Rounds.

Q. What Diſtance was you then from her?

A. About Two Cables Length.

Q. Was you quartered near the Powder-room-Scuttle?

A. Yes.

Q. Did you hear any thing about Want of Powder?

A. No—We were very well ſupplied, at our Guns.

Then he withdrew.

John Wylly, Maſter's Mate on board the *Dorſetſhire*, was called in, and ſworn.

His Depoſition read, as follows:

John Wylly, *late Mate on board his Majeſty's Ship* Dorſetſhire, *ſworn, depoſeth*;

THAT, in the Engagement, as above, he was quartered on the Middle-Gun-deck; and being, at that time, in the Larboard Entering-Port, when Admiral *Mathews*, and the *Marlborough*,

borough, were bearing down to the *Real*, he heard ſeveral Words, from one Ship to the other, not diſtinctly enough to underſtand all the Particulars; but that they could not think what Mr. *Leſtock* was doing: Preſently after, he ſaw a Gun fired from the *Namur*; then they began from the *Real*. The Deponent then went to his Quarters on the Starboard-ſide, and never ſaw the *Namur* more; did not ſee her under their Lee, till, going on the Quarter-deck, he ſaw him on their Starboard-Bow. In a very little time, the Ship aſtern of the *Real* fired ſeveral Guns at us, and I ſaw ſeveral of the Shot fall over us: Preſently after, we engaged her, till her Main-top-ſail Yard came down on the Cap, and their Colours fell on the Tafarel; and, preſently after, ſhe bore away: Then ſhe got her Main-tack aboard, and hauled her Wind under the *Real*'s Quarter. We then fired our Foremoſt Guns at the *Real*, and the After ones at her, at the Diſtance of Half a Mile, or thereabouts; and continued ſo until the *Marlborough* loſt her Main and Mizen Maſts: Then ſhe fell ſo far aſtern, that we could not fire any more; for the other Ship ſhot ahead. I then went on the Quarter-deck, where I ſaw the Men, in the Starboard-Gangway, fixing the Rigging; and the Ship had taken in ſo much Water at the Ports, that it ran violently into the Cockpit, among the wounded Men; and we were forced to pump it out. An Officer came from the Admiral, who was then on our Larboard-Bow, and told the Captain, The Admiral would have him go to aſſiſt the *Marlborough*. The Captain asked, If he was to take the *Marlborough* in Tow, or engage the *Real*. The Officer could not be ſure; but, as he was going, turned back, and ſaid, He believed to engage the *Real*. The Captain directly ordered to ſee all clear, to engage her. The People gave a great Shout, and I went to my Quarters; where I preſently ſaw, that we were going athwart the *Marlborough*'s Hawſe. We preſently afterwards brought our Guns to bear on the *Real*, and fired, by Order. She preſently bore away before the Wind: We fired at her Stern, till ordered to leave off. The Deponent affirms, That, from the Guns he had in Charge, they never fired but when nigh enough to do Execution, to the beſt of his Judgment. When he ſaw the Captain on the Quarter-deck, he behaved with great Calmneſs, Compoſure, and Reſolution.

John Wylly.

Sworn by me,
Geo. Atkins, Deputy Ju. Adv.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Middle-Gun-deck.

Q. When you hauled up, to engage the Enemy, after the Admiral began to engage, was you in a Line with the Admiral?

A. When the Admiral began to engage, we were obliged to port our Helm, in order to go to the *Hercules*; and, in going down to her, I ſaw Mr. *Mathews* fire from the Quarter-deck.

Q. Was you in a Line with the Admiral, when you began to engage?

A. I can't tell—I was at my Duty between Decks.

Q. Did you look out, to ſee if the Admiral was to Leeward?

A. I looked often out of the Ports, as well as out of the Entering-Port; but I never ſaw him to Leeward.

Q. What Diſtance was you from the *Hercules*, when you began to engage?

A. About half a Mile.

Q. How long did you continue Engaging at that Diſtance?

A. About an Hour.

Q. You ſay, From the Entering-Port, you never ſaw the *Namur* to Leeward.

A. No, never.

Q. How often did you look out of the Entering-Port?

A. Twice.

Q. What! Did you fire, after you had done with the *Hercules?*

A. The Foremoſt Guns were fired at the *Real*, and the Aftermoſt at the *Hercules*.

Q. After you drove the *Hercules* away, What did you do?

A. When ſhe ran under the *Real*'s Quarter, we ceaſed Firing at her for a ſmall Time; but ſhe dropping aſtern again, we ſoon renewed our Fire at her.

Q. When the *Hercules* was quite out of the Line, What did you do then?

A. We fired our Foremoſt Guns at the *Real*.

Q. Why did you not fire your Aftermoſt Guns at her too?

A. She was ſo far ahead, we could not bring them to bear.

Q. When you looked out at the Entering-Port the Second time, Where did you ſee the *Marlborough?*

A. About a Point upon our Lee-Bow.

Q. When you engaged the *Real*, and could not, at the ſame time, engage the *Hercules*, What Diſtance might you then be from the *Real?*

A. I can't tell exactly; but, I believe, about a Third of a Mile diſtant.

Q. How often did you fire your Guns in all?

A. About Twelve or Fourteen times each, where I was quartered.

Q. Did you lower the Metal?

A. We took out the Quoins, and laid the Guns upon the Beds.

Q. When the *Hercules* fell aſtern again from under the *Real*'s Quarter, Did ſhe fire any Guns at you afterwards?

A. Yes.

Q. Did you lie inactive any time?

A. Yes; after the *Marlborough* loſt her Maſts.

Q. How long did you lie inactive?

A. About Half an Hour.

Q. Had you any Men killed, or wounded, where you was quartered?

A. No: There were ſome killed upon the Quarter-deck.

Q. Did any Shot go through the Ship's Sides upon your Deck?

A. No, not upon that Deck.

Q. Do you know any thing of double-headed Shot?

A. There was one handed down to me from the Quarter-deck.

Q. When the *Marlborough*'s Maſts were gone, Did you ſee the *Hercules?*

A. No: I ſaw Two or Three Ships go to Leeward of the *Marlborough*; and, poſſibly, ſhe might be one.

Q. What became of her afterwards?

A. I did not ſee her afterwards.

Then he withdrew.

Richard Jocham, Captain's Clerk on board the *Dorſetſhire*, was called in, and ſworn.

Q. Where was you quartered?

A. Upon the Quarter-deck.

Q. Tell the Court what you know, relating to the *Dorſetſhire*.

A. About One o'Clock, the *Namur* and *Marlborough* bore down; and the *Dorſetſhire* did the ſame, and brought the *Marlborough* abreaſt of her:—The *Namur*, I think, was the Firſt Ship fired; and we kept Bearing down to the Ship aſtern of the *Real* for ſome time, till they began to fire at us: When the Captain found the Shot went over us, he brought the Ship to, the *Namur* then being right ahead of us; and we began to fire away upon the *Hercules*, and continued Firing for an Hour, or better; when ſhe bore away from us a little Way, made a ſort of a Yaw, and then kept her Wind again, and ſtood on after the *Real*. We kept Firing at her; and ſhe run up under the *Real*'s Lee-Quarter: We came up with her, and, I believe, engaged both Ships together; for I heard the Captain order the Foremoſt Guns to be pointed at the *Real*, and the Aftermoſt at the *Hercules*:—We kept engaging thoſe Two Ships, till the *Marlborough* loſt her Maſts, and fell in between us and the *Real*; when it was ſaid by the People, That we could not bring our Guns to bear, without endangering the *Marlborough*; and the Captain ordered them not to fire. Soon after the *Marlborough*'s Maſts were gone, I obſerved the *Hercules* to ſhoot ahead, and go to Leeward of the *Real*; and never ſaw her afterwards: We lay then inactive near Twenty Minutes, and fired no Guns; and then Mr. *Bentley* came with a Meſſage from the Admiral:—We were Splicing and Repairing our Rigging and Shrouds during that time; and I then obſerved the Main-maſt to be ſhot through: When Mr. *Bentley* came on board, on the Larboard-ſide of the Quarter-deck, where Captain *Burriſh* was on the Larboard-Arm-Cheſt, Mr. *Bentley* ſaid, The Admiral ſent him to order Captain *Burriſh* to go and aſſiſt the *Marlborough*: The Captain anſwered, He wiſhed he knew what the Admiral would have him do, and he ſhould be glad to do it; and aſked, If he thought it would be agreeable to the Admiral, that he ſhould go down ahead of the *Marlborough*, and engage the *Real*. Mr. *Bentley* ſaid, He did not know any other, but that the Admiral had directed him to order Captain *Burriſh* to go down, and aſſiſt the *Marlborough*: Then Mr. *Bentley* went away: And Captain *Burriſh* ordered the Top-gallant-ſails to be looſed, the Foreſail dropped, and the Helm aport; and bore away.—Soon after, Mr. *Page*, the Firſt Lieutenant, came upon the Quarter-deck, and told the Captain, There was no Powder filled; upon which Captain *Burriſh* immediately ſent for the Gunner; and, while the Meſſenger went for the Gunner, the Captain hailed Mr. *Bentley*'s Boat with a Speaking-Trumpet, and told him, He had been informed, There was no Powder filled: I did not hear any Anſwer from Mr. *Bentley*. The Gunner then came to the Larboard-Gangway to the Captain; who ſaid to him, Gunner, I hear you have no Powder filled: The Gunner replied, There was Powder enough filled to go alongſide of any Ship. The Captain then ordered the Helm aport again; and then directly ſent for his Lieutenants, and told them, He had Orders to bear down upon the *Real*; and that he thought proper to ſend for them, to ſhew them the Situation he was in; and he ſhewed them the Five *Spaniſh* Ships aſtern, that were coming up, and our Ships to Windward; and ſaid, None of them was coming to our Aſſiſtance. One of the Lieutenants ſaid, We might bear down with Safety. Captain *Burriſh* ſaid, Gentlemen, I have not ſent for you to aſk your Advice; but to let you ſee, that, if thoſe Five Ships ſhould weather me, and I ſhould be obliged to haul off, you would be able to anſwer for my Conduct. Then the *Dorſetſhire* bore down, ahead of the *Marlborough*, upon the *Real*, and engaged her very cloſe for about a Quarter of an Hour; and, when the Smoke cleared up, we ſaw her Stern to us: We kept Firing at her Stern; I ſaw ſeveral Shot go into her Stern, ſeeing the Splinters of her carved Work flying about; and we fired at her, till the Captain thought the Shot would not reach her; and then we lay to inactive.—Then a Boat came on the Starboard-ſide from the *Marlborough*, with an Officer; who deſired the Captain would ſend a Boat to aſſiſt in Towing off the *Marlborough*: The Captain immediately ordered the Barge to be hoiſted out: While the Barge was hoiſting out, the Fireſhip came down ahead of the *Dorſetſhire*: Captain *Burriſh* hailed her with a Trumpet; and aſked Captain *Mackey*, If he was going down to the *Real*; and if he could aſſiſt him: The People, upon the Captain's Hailing, ran over to the Starboard-ſide; ſo that I did not hear what Anſwer was made:—She went, as if ſhe was going aſtern of us,

and

and then bore away before the Wind, directly for the *Real*. When Captain *Burriſh* ſaw ſhe was going to the *Real*, he ordered his Barge, which was hoiſted out for the *Marlborough*, to go and aſſiſt the Fireſhip: Before the Barge had got half-way, the Fireſhip blew up upon the *Real*'s Starboard-ſide. Soon after that, the Two headmoſt of the Five *Spaniſh* Ships, coming up, began to fire upon us, and continued to fire for ſome time; and then we began to fire upon them.—Soon after, Mr. *Mathews* ran down between us and the Enemy; and we followed him; and ſo engaged thoſe Ships, in paſſing, about a Quarter of an Hour.

Q. Did you obſerve the *Eſſex* fire upon the Enemy?

A. Yes.

Q. Did her Shot fall ſhort?

A. I can't ſay:—Some Shot fell ſhort.

Q. What Diſtance was you from the *Eſſex*, when you firſt began to engage?

A. About Two Cables Length.

Q. Was you near the Captain, when the Gunner talked about Powder?

A. Yes:—The Gunner ſaid to the Captain, Sir, There's Firing! Sir, There's Firing! To which the Captain anſwered, There's Fighting indeed, Gunner!

Q. Were any Orders given to lower the Metal?

A. I think, the Captain did order it.

Q. Did you hear the Gunner ſay to the Captain ſoftly, ſo that it might not be known to the Ship's Company, We are at too great a Diſtance?

A. No; I did not hear him ſay any thing like it; and I was, at that time, quite cloſe to the Captain.

Q. Did the Gunner ever whiſper the Captain?

A. No.

Q. Was the *Dorſetſhire* in a Line with the Admiral, at the Beginning of the Engagement?

A. The Admiral was directly ahead, when we began to engage; but, after that, to Windward of us.

Q. Did you ever hear the Gunner, or any other Perſon, ſay, You was too far diſtant from the Enemy?

A. No; I never heard it.

Q. When the *Marlborough*'s Boat came on board the *Dorſetſhire*, Did you hear any of the People in that Boat ſay, That you engaged at too great a Diſtance?

A. No.

Priſoner asked,

Q. Do you remember any thing of a double-headed Shot coming on board?

A. Yes: There was one brought to you: The Bar of it was ſquare; and the Head ſeemed like a Shot ſplit.

Q. Did you ſee any Grape-ſhot come into the Ship?

A. When all was over, I was ſhewn a Hole in the Quarter, where a Grape-ſhot was buried; which I took out of the Ship-Side myſelf.

Q. How deep was that Shot?

A. It was quite buried.

Then he withdrew.

John Woodſide, Foremaſtman on board the *Dorſetſhire*, called in, and ſworn.

His Depoſition read, as follows;

John Woodſide, *Mariner on board the ſaid Ship, ſworn, depoſeth*;

THAT, in the Engagement aforeſaid, he was quartered to the Rigging forward; and, when Admiral *Mathews* and the *Marlborough* bore down upon the *Real*, we bore down to the Ship aſtern of her (which, we are told, was the *Hercules*); and, when we came within about half a Mile of her, ſhe fired ſeveral Shot at us, many of which went over our Ship: We then furled our Topgallant-ſails, hauled our Wind, and fired on the Enemy. I obſerved our Ship to be in a Line with the *Marlborough* and *Namur*, until the *Marlborough* ſhot in between the *Namur* and *Real*; which brought her a little on our Starboard-Bow, and the *Namur* on our Larboard-Bow: We engaged the *Hercules* about an Hour, or more, within about Half a Mile; when ſhe bore away from us, with her Maintopſail Yard and Colours down; but ſoon hauled her Wind again, and got near the *Real*'s Quarter: We continued Firing upon her, and the *Real*, who ſhot away a great deal of our Rigging; and, when we were ſecuring our Foremaſt, the Spring-ſtay being ſhot, *Michael Dillon* came off the Bowſprit, and adviſed me not to go, the Shot came ſo thick over us; but I went out, with *Ben. Frenny*, and others, and got the Stay fixed and ſet up, about Four *poſt meridiem*, juſt before we bore away ahead of the *Marlborough*, and cloſe down to the *Real*, whom we engaged, very hot, for about a Quarter of an Hour; when ſhe bore away, with her Stern to us: We kept Firing into it, until ſhe got ſo far to Leeward, that our Shot would not reach her; for we brought to, to avoid falling to Leeward of Five Sail of *Spaniſh* Ships, that were coming up. Soon after, the *Anne Galley* Fireſhip came down to us: The Captain hailed her, and aſked, If he could be of Service to her: We thought, ſhe anſwered, No, no: However, after we ſaw her bear down to the *Real*, the Captain ſent the Barge to her; but ſhe blew up, before they could reach her; and her Men came aboard in their own Boats. Shortly after, the headmoſt of the Five Sail began to fire upon us; when ſhe came pretty near, we fired again: The Diſtance might be about a Quarter of a Mile; but it was not long before Admiral *Mathews* wore Ship, and ran between us: We forbore Firing, till he was paſſed; then we wore after him, engaging thoſe Ships as we paſſed: Which brought Night.

Sworn by me, *John Woodſide.*
Geo. Atkins, Deputy Judge Ad.

And he declared the ſame to be true.

Q. Was the *Dorſetſhire* in a Line with the Admiral, when he brought to?

A. Yes, I am ſure ſhe was.

Q. Did you begin to engage, when you brought to?

A. Yes, we did.—We began to engage the *Spaniſh* Admiral's Second.

Q. At what Diſtance?

A. About Half a Mile.

Q. How long did you engage her?

A. About an Hour.

Q. How came you to leave off engaging her?

A. She bore away under the *Real*'s Quarter; and then we engaged the *Hercules* and *Real* together.

Q. Where was the *Marlborough* then?

A. Upon the *Real*'s Beam.

Q. Where was you then?

A. A little upon the *Marlborough*'s Weather-Quarter.

Q. What Diſtance was the Fireſhip from you, when ſhe blew up?

A. About Half a Mile.

Q. How near was ſhe to the *Real*, when ſhe blew up?

A. About a Cable's Length, or hardly ſo much.

Q. Was your Ship at any time ſo much diſabled in her Rigging, as to prevent working the Ship?

A. I can't ſay but ſhe might be worked, but our Maſts were in Danger from the Number of Shrouds that were ſhot away.

Q. What Rigging do you know was ſhot away?

A. The Foreſpring-ſtay, one of the Forejeers, Two Shrouds, both on the ſame Side; the Fore-topſail-ſheet and Forelift, Foreclew-garnet; Spritſail-braces, Spritſail-ſheets, and Foreſtayſail-ſheet.

Q. When the *Hercules* was forced to Leeward of the *Real*, Did ſhe ever return to her Station?

A. No; ſhe made a Yaw, when ſhe firſt bore away; and got under the *Real*'s Quarter; and there we engaged her and the *Real* together; and Captain *Burriſh* ordered the Foremoſt Guns to be pointed at the *Real*, and the Aftermoſt at the *Hercules*.

Q. Was that before the *Marlborough*'s Maſts were gone?

A. Yes: And, about the Time ſhe loſt her Maſts, the *Hercules* ſtretched away ahead and to Leeward, and never returned again to her Station.

Q. How do you know the Captain ordered the Foremoſt Guns to be pointed at the *Real*?

A. Becauſe I heard him give thoſe Orders.

Q. Do you remember receiving any Meſſage from the Admiral?

A. No.

Q. How many Men had you killed, where you was quartered?

A. None upon the Forecaſtle, that I know of.

Q. Did you fire any of your Small-Arms?

A. Yes.

Q. At what time?

A. The laſt time of engaging the *Real*.

Q. Was you within Small-Arm Diſtance?

A. I think we were: We were within a Quarter of a Mile.

Then he withdrew.

Michael Ennis, Foremaſtman on board the *Dorſetſhire*, was called in, and ſworn.

His Depoſition was read, as follows:

Michael Ennis, *Mariner*, *belonging to the ſaid Ship*, *ſworn*, *depoſeth*;

THAT, in the Engagement aforeſaid, he was quartered to the Rigging forward; and when Admiral *Mathews*, and the *Marlborough*, bore down upon the *Real*, they bore down to the Ship aſtern of her; when we came within Half a Mile of her, ſhe fired ſeveral Shot, many of which went over us; then furled our Topgallant-ſails, and, hauling our Wind, we began to fire on the Enemy; our Ship was in a Line with the *Marlborough* and *Namur*, till the *Marlborough* ſhot in between the *Namur* and *Real*; which brought them a little on our Starboard-Bow, and the *Namur* on our Larboard-Bow: We engaged the *Hercules* for about an Hour or more, within about Half a Mile; when ſhe bore away from us, with her Main-topſail Yard, and Colours down: She ſoon hauled her Wind again, and got near the *Real*'s Quarter: We continued firing on her, and the *Real*, who ſhot away a great deal of our Rigging; and when we were ſcaning our Foremaſt, the Spring-ſtay being ſhot, *Michael Dillon* adviſed me, not to go out upon the Bowſprit, the Shot came ſo thick over us; but we went out, and fixed the Stay by about Four o'Clock, juſt before we bore away ahead of the *Marlborough*, and cloſe down to the *Real*, whom we engaged very bold, about a Quarter of an Hour; then ſhe bore away with her Stern to us; we kept firing into her, till ſhe got ſo far to Leeward, our Shot would not reach her: We brought to, to avoid falling to Leeward of Five Sail of *Spaniſh* Ships, who were coming up: The *Anne Galley* Fireſhip then came down by us: The Captain hailed her, to know if ſhe was going down to the *Real*, or if we could be of Service to her: We thought ſhe anſwered, No, no; but, ſeeing her go down to the *Real*, the Captain ſent the Barge to her; which could not reach her, before ſhe blew up; and her Men came aboard in their own Boats: Then the headmoſt of the Five Sail began to fire upon us; and, when ſhe came near, we fired again; but Admiral *Mathews* wore between us, and we wore

after him, engaging the Five Sail as we paſſed them.

his
Sworn before me, *Michael* + *Ennis*,
George Atkins, Dep. Ju. Adv. Mark.

And he declared the ſame to be true.

Q. Where was you quartered?
A. At the Rigging forwards.
Q. What Ship did you firſt engage?
A. The *Hercules*.
Q. Was you within Point-blank?
A. I don't underſtand Point-blank; but we were within Half a Mile.
Q. Did you engage near enough to do Execution?
A. Yes.
Q. Did her Shot go over you before you began to engage?
A. Yes, many of them, as far as we were to Windward of the Enemy.
Q. Do you believe, that by your ſmartly engaging with the *Hercules*, you prevented her Firing upon the *Marlborough?*
A. Yes, I believe we did.
Q. In what Poſition was the *Hercules* then with regard to the *Real?*
A. Aſtern, and to Leeward withal.
Q. What Diſtance was ſhe from the *Real?*
A. About Half a Mile.
Q. Did you fire any Small-Arms at the *Hercules*, at the Beginning of the Engagement?
A. No.
Q. Do you ſay, upon your Oath, That you was in a Line with the *Namur?*
A. Yes; we were in a Line with her; for we had her Three Maſts in One, till the *Marlborough* fell between us and the *Real*; and then the *Namur* was to Windward.
Q. Was the *Namur* hauled off, before or after you began to engage?
A. Juſt after.
Q. How far might ſhe be upon your Weather-Bow, after ſhe was hauled off?
A. About Two Points on our Weather-Bow.
Q. Did not the Admiral haul off, before you began?
A. No; about a Quarter of an Hour after.
Q. Did you ſee the *Namur*, when the *Marlborough* ſhot up between her and the *Real?*
A. Yes; we were then engaged; and we were then in a Line with the *Namur*.
Q. When the *Namur* engaged the *Real*, What was the *Marlborough* doing?
A. They were both engaged together.
Q. What occaſioned the *Namur* to haul off?
A. The *Marlborough* running in to Leeward between the *Namur* and *Real*.
Q. Did they exactly begin to engage together?
A. The *Namur* fired firſt.
Q. How long do you believe the *Namur* engaged in the Whole?
A. I can't tell.
Q. Do you believe it was your Shot occaſioned the *Hercules* to bear away?
A. Yes.
Q. Did you ſee any Damage the *Hercules* received?
A. Yes, I ſaw her Main-topſail Yard down, her Colours down, and her Foretopſail Yard hanging in the Slings.
Q. Did the *Marlborough* ever fire upon the *Hercules?*
A. No, never, to the beſt of my Knowlege.
Q. How do you know ſhe never fired at the *Hercules?*
A. I can't tell—the *Hercules* kept continually firing upon us.
Q. How long did you engage the *Hercules?*
A. About an Hour before ſhe bore away.
Q. After the *Hercules* bore away, Did ſhe ever engage again?
A. Yes; ſhe luffed up under her Admiral's Quarter, and engaged again.
Q. What Diſtance of Time was it from the Fireſhip's going ahead of you, and her blowing up?
A. A few Minutes.
Q. How was the *Real* going then?
A. Before the Wind.
Q. How many Minutes might it be between the Fireſhip's going ahead of you, and her blowing up?
A. About Eight or Nine Minutes; but I can't juſtly ſay.
Q. Was you never off the Upper-deck?
A. No.
Q. Are you ſure, that, during the whole Engagement, you was never to Windward of the *Namur?*
A. No; I am ſure we never were.

Priſoner asked,

Q. What Rigging was ſhot forward during the Engagement?
Q. The Foreſpring-ſtay, Spritſail-braces, Fore-ſtayſail-ſheets, Forelifts, Fore-topſail-ſheet, the Fore-clewgarnet, the Fore-topgallant, and Fore-topmaſt-backſtays, Two Fore-ſhrouds on the Larboard-ſide, the Starboard Fore-jeers.

Court asked,

Q. Was ſhe ever ſo diſabled in her Rigging, as not to be able to work?
A. There was an ugly tumbling Sea.
Q. Could you not have worked your Ship?
A. Yes, ſhe might have been worked.

Priſoner asked,

Q. Do you remember the Foretop-bow-line to be ſhot?
A. That was done up in the Top; and I give an Account only of what was done upon Deck.
Q. In what Part was the Fore-topſail-ſheet cut?
A. In the Wake of the Yard; but the Stopper held the Sheet.
Q. Was you quartered at Small-Arms?
A. Yes.

Q. Did

Q. Did you ever fire any Muſquet-ſhot?

A. Yes, ſeveral times, while we were engaged with the *Real.*

Court asked,

Q. When you fired at her, Did you ſee any People to fire at; or did you fire at the Ship?

A. We fired at the Ship.

Q. Was there anybody killed at your Quarters?

A. No.

Q. Do you remember what Damage your Sails received?

A. Yes; our Fore-topſail was very much damaged; and unbent the next Morning; and our Foreſail was ſhot ſeveral times through.

Then he withdrew.

Chriſtopher Priſſick, Midſhipman on board the *Dorſetſhire*, was called in, and ſworn.

Q. Where was you quartered?

A. At the Braces.

Q. Relate what you know concerning the *Dorſetſhire.*

A. A little after One o'Clock, the *Namur* and *Marlborough* bore down upon the *Real*, and the *Dorſetſhire* with them: In a little time the *Namur* began to engage the *Real:* We then ported our Helm, in order to fall alongſide the *Hercules*, ſhe being then at ſome Diſtance from the *Real:* When we came within Half a Mile of the *Hercules*, ſhe fired at us, and we immediately brought to, and engaged her upwards of an Hour; and ſhot down her Main-topſail Yard, and Foreſail Yard Half Maſt down, and her Colours: She bore away about a Cable's Length; and preſently hauled her Wind again, and came under her Admiral's Quarter: We edged down a little nearer to the *Real*, and engaged the *Hercules* and *Real* both for about Half an Hour: We then perceived the *Marlborough* to have loſt her Maſts; and we then back'd our Head-ſails; but were ſoon obliged to leave off Firing at the *Real*; the *Marlborough* dropping aſtern between us and the *Real:* We then began to repair our Rigging, and get Shot up: Then the Admiral's Lieutenant came on board, but ſoon went away again: Then the Captain ordered the Foreſail to be let fall, the Jib to be hoiſted, and the Topgallant-ſails to be looſed: After bearing away for Five or Six Minutes, we flung to again, upon a Report, that there was no Powder; but it ſoon being cleared up by the Gunner, that there was Powder enough filled, we bore away again; and then the Captain ordered all the Lieutenants to be called up: As ſoon as they came, he told them, The Admiral's Lieutenant had been on board; and that it was the Admiral's Orders we ſhould go down and aſſiſt the *Marlborough*; which I am now doing: On which Lieutenant *Griffiths* ſaid, That you may do with Safety: The Captain then deſired they would take notice of the Poſition of the Ships aſtern; and that there was none of our Ships bearing down but ourſelves; and that the Enemy's Ships would ſoon be up with us: Then the Captain ordered all the Lieutenants down to their Quarters:— We very ſoon got pretty near the *Real*, and began to engage her; and engaged her for about a Quarter of an Hour, when ſhe bore away, with her Stern directly towards us, which we kept firing into, till ſhe had got ſo far to Leeward, that we judged our Shot would not reach her: We then brought to, and juſt afterwards the *Marlborough*'s Boat hailed us, and deſired we would ſend a Boat to aſſiſt them, for they had a great many of their Men killed: Then the Captain ordered the Barge to be hoiſted out: In the mean time the *Anne Galley* Fireſhip coming by us, the Captain hailed her, and aſked, If ſhe was going down to the *Real*, and if he could be of any Aſſiſtance to her: They made Anſwer; but I know not what it was: She hauled up towards the Stern of us, and afterwards bore away: Upon which the Captain ordered the Barge to follow, to her Aſſiſtance; but before the Barge could get Half-way, the Fireſhip was blown up, and the People were brought on board the *Dorſetſhire* in their own Boat: In a very little time afterwards the headmoſt of the Five *Spaniſh* Ships aſtern fired ſeveral Shot over us, which we began to return, and engaged her near a Quarter of an Hour: Then the Admiral wore Ship, and came between us and the Enemy: We wore after him, as ſoon as he was clear of us: We then fired at the Enemy a ſmall time; they ſtanding to the Southward, and we to the Northward.

Q. Was you in a Line with the Admiral, when you began to engage?

A. Yes.

Q. At what Diſtance from the Enemy did you engage?

A. About Half a Mile.

Q. How long did you engage ſo?

A. A little above an Hour.

Q. When you brought to, to engage the *Hercules*, Had the *Namur* then hauled off from the *Real?*

A. Juſt after we began to engage, ſhe hauled off.

Q. Was you in a Line with the Admiral, before he hauled off?

A. We were in a Line with him, when we brought to; and he was then engaged with the *Real.*

Q. Did the *Marlborough* begin to engage the *Real*, before you began to engage the *Hercules?*

A. It was about the ſame time.

Q. Did the *Marlborough* fire at the *Hercules?*

A. I can't ſay.

Q. Was you to Leeward of the *Marlborough*, or to Windward?

A. We were in a Line with the Admiral, but to Windward of the *Marlborough.*

Q. What Diſtance was you from the *Marlborough* at firſt?

A. About

A. About Half a Mile.

Q. How did the *Marlborough* bear from you?

A. About a Point upon our Lee-Bow, or ſcarce that.

Q. Did the Shot reach you, that came from the Five *Spaniſh* Ships aſtern, before you wore?

A. Yes; they went over us.

Q. Did you ever fire Small-Arms?

A. No; we did not fire any that I remember.

Q. Could Muſquet-ſhot reach?

A. I can't ſay how far Muſquet-ſhot will reach.

Q. At what Diſtance did you engage the *Real*, when you fired at her ahead of the *Marlborough?*

A. About a Quarter of a Mile.

Q. How far was Admiral *Leſtock* from you, when the headmoſt of the Five *Spaniſh* Ships fired at you?

A. About Four or Five Miles.

Q. How far was Admiral *Leſtock* then from thoſe Five Ships?

A. About Four Miles from the Two headmoſt; and about Three Miles from the Three ſternmoſt; and the ſternmoſt muſt be near abreaſt of him.

Q. How far were thoſe Five Ships from the *Dorſetſhire*, and how ſituated with regard to her?

A. Two of them were right aſtern of us, and the headmoſt of them about Three Quarters of a Mile from us; and there was a Break between them and the other Three, who were more to Leeward.

Q. How long did you engage the Two headmoſt of the *Spaniſh* Ships aſtern?

A. About a Quarter of an Hour.

Q. With what Guns?

A. Some of our Aftermoſt.

Q. Where was the *Rupert* then?

A. Upon our Weather-Quarter.

Q. Where was the *Royal Oak?*

A. I did not ſee her.

Q. Where was the *Eſſex?*

A. About Half a Mile upon our Beam.

Q. Was the *Eſſex* nearer than the *Rupert?*

A. Yes:—But the *Eſſex* was a great Way to Windward.

Q. Are you ſure there were Five *Spaniſh* Ships aſtern of the *Hercules?*

A. Yes; I am ſure there were Five Sail.

Q. Do you know any thing of double-headed or Grape-ſhot coming on board you?

A. I ſaw one Grape-ſhot come in, which ſtruck againſt the Sheet-anchor, and dropped down; and I took it up.

Q. At what time what was that?

A. While we were engaged with the *Hercules* and *Real* together.

Then he withdrew.

The Court adjourned till To-morrow Morning, at Eight o'Clock.

The Seventh Day's TRYAL of Captain GEORGE BURRISH,

On Board His MAJESTY'S *Ship the* London, *at* Chatham,

THURSDAY, the Third of *October*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent as were Yeſterday; except Captain *Windham*, who is confined to his Bed by Illneſs.

The Marſhal brought in the Priſoner, and the Witneſſes ordered to be called in.

Samuel Granſdon, Midſhipman on board the *Dorſetſhire*, was called in, and ſworn.

His Depoſition read, as follows;

Samuel Granſdon, *Midſhipman aboard the ſaid Ship, ſworn, depoſeth*;

THAT, in the Engagement aforeſaid, he was quartered to the Braces forward; and remembers, that in the Morning ſeveral Signals were made, which he can't be particular in; but, about Eleven, *A. M.* the Red Flag was hoiſted at the Fore-topmaſt Head; and, about Half after Twelve, was hauled down, and a White Flag hoiſted. About Three Quarters after Twelve, the Red Flag was rehoiſted, a Signal to engage the Enemy, who were in to Leeward in a Line ahead of each other. About One the *Namur* engaged the *Real*; but the *Marlborough* running cloſe upon the *Namur*'s Lee-Quarter, obliged her to haul away. We, who had bore down to engage the Ship aſtern of the *Real* (which I heard was called the *Hercules*), when we were within about Half a Mile of her, ſhe fired briſkly on us. We furled our Top-gallant-ſails, hauled our Wind, and began to engage; ſoon after, hauled up our Foreſail: The *Namur* then bore right ahead of us, and the *Marlborough* a Point on the Lee-Bow, diſtant about Half a Mile. We continued engaging her about an Hour, when

ſhe bore round away, with her Main-topſail Yard down on the Cap, and her Colours down. Soon after, ſhe hauled her Wind, and went cloſe to the *Real*'s Lee-Quarter. We continued Firing, and edged away, until we brought the *Marlborough* to bear about a Point and Half on the Lee-Bow, at the Diſtance of about Two Cables Length; the *Real* about Four Points on the Lee-Bow, at the Diſtance of about Half a Mile; the *Hercules* upon the Beam much the ſame Diſtance, the *Namur* being a little upon our Weather-Bow. We then engaged both the *Real* and *Hercules*, till the *Marlborough*'s Maſts went away. We backed our Topſails, in order, as I imagined, to keep thoſe Ships open; but, ſoon after, the *Hercules* went off; and the *Real* ſhooting ahead, brought the *Marlborough* between us; which prevented our Firing; and our People were employed in knotting and ſplicing the Rigging, fitting the Shot-Lockers, fixing our Fore-ſpring Stay, which was ſhot, and our Main Shrouds, the Maſts ſhot through: Then I heard there was a great deal of Water below, which we pumped out; and were thus employed about Half an Hour: Then hoiſted the Jib, ſet Foreſail and Top-gallant Sails, and was bearing down to the *Real*; but on a ſudden luffed again, and brought to; occaſioned, as I was told, by the Captain's being informed there was no Powder filled. This Miſtake being cleared up by the Gunner, we bore away again (it having detained us about Ten Minutes) ahead of the *Marlborough*; and, within leſs than Two Cables Diſtance, hauled our Jib down, and Foreſail up, and hauled our Wind, and began engaging the *Real*, who ſoon bore round away with her Stern towards us, which we fired into as long as we could; then brought to, and furled Top-gallant Sails; ſaw the *Anne Galley* Fire-ſhip come down ahead, and run abreaſt of us. Our Captain hailed her, aſked, If they were going down to the *Real*, and if they wanted any Aſſiſtance. Could not underſtand her Anſwer; but when ſhe was a little aſtern, ſhe bore round for the *Real*, and the Captain ordered the Barge immediately to her Aſſiſtance: Before they could get to her, ſhe blew up, and their People came aboard in their own Boat: Then the headmoſt of the Five Ships (that were aſtern, and might have weathered us) began to engage, which we returned. Soon after the *Namur* came down ahead of us, and went between them. We immediately hoiſted the Jib, ſet our Foreſail and Top-gallant Sails, and wore after the Admiral. We kept a hot Fire at thoſe Ships, as we paſſed them; by which time the Day was cloſed, and we kept after the Admiral, ſtanding to the Northward.

Samuel Granſdon.

Sworn by me,
Geo. Atkins, Deputy Ju. Adv.

And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Braces forward.

Q. Tell what you know concerning the *Dorſetſhire?*

A. The *Namur* and *Marlborough* bore down to the *Real*, and the *Dorſetſhire* to the *Hercules*, the Ship next aftern of the *Real*.

Q. What Diſtance was the *Hercules* aſtern of the *Real?*

A. She was about Four Cables Length from the *Real*.

Q. Was you in a Line with the Admiral, when you hauled your Wind?

A. The Admiral was right ahead.

Q. Had you his Maſts in one?

A. Yes.

Q. How many of you were quartered at the Braces?

A. Four of us.

Q. How long was the Admiral engaged, before you began to engage the *Hercules?*

A. About Six or Seven Minutes.

Q. Was you braced to, or under Sail, when you engaged her?

A. We were under our Three Topſails. We hauled up our Foreſail, ſoon after we began to engage.

Q. Did the *Hercules*'s Shot reach you?

A. Yes: They went conſiderably over us.

Q. Was the *Namur* hauled up, to keep clear of the *Marlborough*, when you began to engage?

A. No: About Six or Seven Minutes after.

Q. When the Admiral hauled up, Was the Signal for the Line of Battle out?

A. I cannot ſay.

Q. When the Admiral hauled up, Did you not inſtantly haul up to keep in the Line?

A. No: The Admiral was inclinable to be on our Weather-Bow, when we hauled up.

Q. How long was you engaged with the *Hercules*, before ſhe edged away under the *Real*'s Lee-Quarter?

A. About an Hour.

Q. During that time, do you think, ſhe engaged wholly with you; or did ſhe fire at any other Ship?

A. Yes; I believe, ſhe engaged wholly with us; for, from the Number of Shot, that went through us, and her Diſtance from the *Marlborough*, I think none were pointed at the *Marlborough*.

Q. Was you as near the *Hercules*, as the *Marlborough* was to the *Real?*

A. No.

Q. At the Time you engaged the *Hercules*, how did the *Marlborough* bear from you, and at what Diſtance?

A. About a Point on our Lee-Bow, and about Four Cables Length diſtant.

Q. How did the *Hercules* bear from you?

A. Upon our Beam, and at the ſame Diſtance.

Q. How long did you engage the *Hercules?*

A. About

A. About an Hour.

Q. Was you under Way?

A. Yes; under our Three Topſails.

Q. Did you not edge down nearer?

A. When ſhe put before the Wind, we edged down nearer to the *Marlborough*.

Q. Was you ever in a Line with the *Marlborough*, during the Time of her engaging the *Real*?

A. No.

Q. Were the *Marlborough*'s Maſts gone, before the *Hercules* hauled under the *Real*'s Lee-Quarter?

A. No.

Q. After you forced the *Hercules* away, did ſhe return to engage again?

A. Yes; ſhe ran under the *Real*'s Lee-Quarter.

Q. Did ſhe fire upon you afterwards?

A. Yes; and we kept a continual Fire at her.

Q. What did you do, upon her Bearing away?

A. We kept edging down towards the *Marlborough*, and engaged both the *Real* and *Hercules*; but we were never in a Line with the *Marlborough*.

Q. Did you keep Large?

A. Yes.

Q. At the Time the *Hercules* brought up to engage again, was ſhe not then nearer to the *Marlborough*, than the *Dorſetſhire*?

A. I believe, ſhe was.

Q. When you firſt engaged the *Hercules*, could you reach the *Real*?

A. No.

Q. Was it before, or after, the *Marlborough*'s Maſts were gone, that you engaged both Ships together?

A. Before.

Q. What Sails had the *Hercules* out, when ſhe engaged you?

A. Her Foreſail, and Three Topſails.

Q. Did ſhe continue that Sail the whole time?

A. I remember no Alteration; only her Main-topſail Yard, coming down upon the Cap.

Q. How long did you lie to, inactive, repairing your Rigging?

A. About Half an Hour.

Q. When you lay inactive, abreaſt of the *Marlborough*, could you not have run ahead of the *Marlborough*, and opened the *Real*, and ſo have engaged her?

A. I am not a Judge.

Q. In how long after you began to engage, did you obſerve the *Marlborough*'s Maſts to be gone?

A. About Two Hours.

Q. What Diſtance was the *Marlborough* then from you?

A. Two Cables Length, and about a Point and an Half upon our Lee-Bow.

Q. Was it not natural, that the *Hercules*, when ſhe was nearer to the *Marlborough* than to you, ſhould rather fire at the *Marlborough*?

A. She did fire at us; I ſaw her Shot fly very thick over us.

Q. When the *Dorſetſhire* backed her Topſails, to engage the *Real* and *Hercules*, Do you know, what Situation the Enemy was in at that Time?

A. I can't tell; I did not take notice.

Q. While you lay inactive, could you not have employed a great Part of your Guns?

A. No, the *Marlborough* was abreaſt of us.

Q. Could you not have filled your Topſails, and ſhot ahead, and opened the *Real*?

A. Yes, we certainly might.

Q. Could you not have wore, and gone to the Aſſiſtance of the *Marlborough*?

A. I believe, not; I think there was not Room to wear, being ſo near the *Marlborough*.

Q. After the *Marlborough*'s Maſts were gone, what Ship did you engage?

A. We hoiſted our Jib, and ſet our Foreſail, and Top-gallant Sails, and bore down ahead of the *Marlborough*, and engaged the *Real*, at the Diſtance of Two Cables Length.

Q. At the time you lay inactive, could you not, without hindering the Repairing of your Rigging, and other Works you was about, have fired, provided the *Marlborough*, or no Ship, was in your Way?

A. I do not know.

Q. Do you remember the Sail you had out, for the firſt Two Hours of your being engaged?

A. Three Topſails.

Q. What Diſtance was you from the *Marlborough*, after the firſt Hour, at the time the *Hercules* bore away under the Admiral's Lee-Quarter?

A. About Two Cables Length.

Q. When you backed your Topſails, after the *Marlborough* loſt her Maſts; Was that done, in order to keep the *Real* open aſtern of the *Marlborough*?

A. I think it was.

Q. Were the *Marlborough*'s Maſts gone, when you lay inactive?

A. Yes.

Q. What was the Reaſon of your lying inactive? What was you doing then?

A. Repairing the Rigging, and pumping the Ship, and other things.

Q. How long did you engage the *Real*, after you ſhot ahead of the *Marlborough*?

A. About Half an Hour.

Q. Was you in your Station in the Line, when the *Marlborough*'s Maſts went away?

A. The *Namur* was rather to Windward of us.

Q. How long did you lie inactive, after the *Marlborough* loſt her Maſts?

A. Half an Hour.

Q. How long had you lain to, before the *Marlborough* loſt her Maſts?

A. Not

A. Not at all.

Q. Did you begin to lie inactive, before, or after, the *Marlborough* loſt her Maſts?

A. A little after:—When the *Marlborough* loſt her Maſts, ſhe dropt aſtern; and by that means was between us, and the *Real*.

Q. What was you doing the Second Hour of the Engagement, after the *Hercules* bore under the *Real*'s Quarter, and before the *Marlborough* loſt her Maſts?

A. We were engaging both the *Hercules* and *Real*.

Q. Was the Enemy inactive, when you was ſo?

A. The *Hercules* went ahead, and to Leeward of her Admiral, and I ſaw no more of her: The *Real* was then engaging the *Marlborough*.

Q. Did the Shot come over your Ship?

A. Yes.

Q. When the *Marlborough*'s Maſts were gone, did you not fill your Topſails, and run between her, and the Enemy, to ſuccour her?

A. About Half an Hour afterwards, we did.

Q. Do you know any thing of the *Marlborough*'s Boat coming on board of you, while you lay inactive?

A. No.

Q. When you was engaged with the *Hercules*, in what Poſition were the *Eſſex*, *Rupert*, and *Royal Oak*?

A. The *Eſſex* was upon our Weather-Quarter: I did not obſerve the others.

Q. How was the Vice-Admiral, and at what Diſtance from you?

A. I can't tell; I did not take notice.

Q. Did the Fire of your Ship oblige the *Real* to bear away?

A. Yes.

Q. So you forced the *Hercules* and *Real* both to bear away?

A. Yes.

Q. After you obliged the *Real* to bear away, at what Diſtance were the *Spaniſh* Ships, that were coming up aſtern?

A. About a Mile and an Half.

Q. Do you think it was the *Dorſetſhire*'s Fire, that obliged the *Hercules* to run under the *Real*'s Quarter?

A. Yes.

Q. Don't you think you could ſooner have engaged the *Real*, by keeping your Topſails full, than by backing them?

A. I imagine the Intent of backing them was, to keep the *Real* open aſtern of the *Marlborough*.

Q. How many Shot do you remember to have hulled you?

A. While we were engaging the *Hercules* alone, a Shot came in, and ſtruck the under Part of the Boom, which canted it upon a Gun, where it made a Dent, and broke to pieces; and a Piece of it broke a Man's Leg, juſt by me.

Q. What other Shot did you receive?

A. A Shot went through the Main-maſt, while we engaged the *Real* and *Hercules*.

Q. Do you remember what time of the Day it was, when you left off engaging the *Real*?

A. About Half paſt Four.

Q. What time did you begin to engage at firſt?

A. About a Quarter after One.

Q. How was the *Real* lying, before you beat her away?

A. With her Broad-ſide to us.

Q. How far off then?

A. Leſs than Two Cables Length.

Q. Did you fire Small-Arms?

A. I think, there were ſome fired.

Q. Were the Guns loaded with Grape-ſhot?

A. I can't tell.

Q. When you engaged within Two Cables Length, Did you hear your Shot take place on board the *Real*?

A. I don't remember:— But, when ſhe had turned her Stern to us, I ſaw ſeveral Splinters fly from her Stern.

Q. How ſoon did the Admiral haul off from the *Real*, after you began to engage?

A. About Six or Seven Minutes.

Q. How long did you engage the *Real*, before ſhe bore away?

A. About a Quarter of an Hour.

Q. When did the Fireſhip come down to you?

A. When we lay to, after we had beat the *Real* to Leeward.

Q. Did ſhe come ahead of you?

A. Yes.

Q. Did you hear your Captain hail her?

A. Yes; Captain *Burriſh* hailed her, when ſhe was upon our Lee-Bow.

Q. Did you hear any Anſwer from the Fireſhip?

A. No; I did not underſtand her Anſwer.

Q. Did you hear the Fireſhip hail the *Dorſetſhire*?

A. No.

Priſoner aſked,

Q. Do you remember what Boats we had on board, when the Fireſhip bore down?

A. The Pinnace was aſtern, which, I believe, was ſunk; the Yawl lay upon the Booms-ſtove; the Barge was ſent to the Aſſiſtance of the Fireſhip; and the Long-boat lay aſtern.

Then he withdrew.

Priſoner. If the Court are of Opinion, that the Grape-Shot came on board me, I will not call any body more to prove it: If not, I will call another to prove it.

Court. You will call, whom you pleaſe.

Thomas Lee, Corporal, on board the *Dorſetſhire*, was called in, and ſworn.

Q. Where was you quartered?

A. In

A. In the great Cabin, at the Aftermoſt Gun.

Priſoner aſked,

Q. What do you know of Grape-Shot, or double-headed Shot, coming on board?

A. Some time after engaging the *Hercules*, a Grape-Shot came into the Gallery, juſt before the Door; and buried itſelf in the Ship's Side, through the Lining of the Gallery.

Court aſked,

Q. How heavy was it?

A. It might be about a Pound Weight.

Q. Did you take it out?

A. It was taken out next Morning.

Q. Did you ſee it in the Ship's Side?

A. Yes; I ſaw it in the Side: I was going to the Gallery to look at the Enemy, when the Shot came in.

Q. What Diſtance was you then from the Enemy?

A. I believe, about Half a Mile; but I am not a Judge of Diſtance.

Q. Did you hear any thing of a double-headed Shot?

A. A Half-ſhot came in juſt abaft the Third Gun from me; which appeared to me to be a double-headed Shot; and went over to the Larboard-Side.

Q. What time was that?

A. At the Beginning of the Action, while we were engaging the Ship aſtern of the *Spaniſh* Admiral.

Q. Do you think you was within Reach of Small-Arms?

A. I am not a Judge.

Court. You a Corporal, and not a Judge of Small-Arms!

Q. How many times did you fire your Gun?

A. I can't tell.

Q. Did you point the Gun yourſelf?

A. Yes.

Q. Did you lower the Metal?

A. I took the Quoin almoſt out at the Beginning, and quite out towards the latter Part of the Engagement.

Q. What was your Reaſon for taking it out the latter Part of the Engagement, and not at firſt?

A. Becauſe, I thought, the Ship heeled more at the latter Part, than at firſt.

Q. What made the Ship heel more the latter Part of the Engagement than at firſt?

A. I can't tell.

Q. In what Poſition were the *Eſſex*, *Rupert*, and *Royal Oak* from you?

A. I ſaw the *Eſſex* upon our Weather-Quarter; but I can't ſay as to the reſt.

Q. How far off was the *Eſſex*?

A. I am not a Judge of the Diſtance.

Q. How far was you from the *Hercules*, when you firſt engaged her?

A. About Half a Mile; but I can't be certain of the Diſtance.

Q. Could your Shot do Execution?

A. Yes.

Q. When your Gun was laid down, how did it point?

A. It did not point over the Gunnel.

Q. Did you always point your Gun yourſelf?

A. No; not always.

Then he withdrew.

Wm. Manly, Midſhipman on board the *Dorſetſhire*, was called in, and ſworn.

Q. Where was you quartered?

A. At the Seventh Gun upon the Upper-deck.

Priſoner. I called him only to prove, that he went in the Barge to aſſiſt the Fireſhip.

Q. What Orders did you receive from Captain *Burriſh*, about going to aſſiſt the Fireſhip?

A. He ordered me to go in the Barge to the Fireſhip, to bring her People off.

Q. How far was ſhe from the *Dorſetſhire*, when you put off?

A. About Two Cables Length.

Q. How far was the Fireſhip then from the *Real*?

A. About Half a Mile.

Q. How far was you from the Fireſhip, when ſhe blew up?

A. About a Cable's Length.

Q. How far was you then from your own Ship?

A. Near Three-quarters of a Mile.

Q. How far was the Fireſhip from the *Real*, when ſhe blew up?

A. Not above her own Length, or a little better.

Q. What Quarter of the *Real* was the Fireſhip upon?

A. Upon the Starboard-Quarter; the *Real* was then before the Wind.

Q. When you put off from your Ship, what was ſhe doing?

A. Lying to.

Q. Was that while you lay inactive, juſt after the *Marlborough*'s Maſts went away?

A. No, we had bore down and engaged the *Real*, ahead of the *Marlborough*, and were then lying to, after the *Real* bore away.

Q. Did you come time enough to aſſiſt the Fireſhip's People?

A. No, the Fireſhip's Boat met me; and I aſked them, if they would have a Tow; and they ſaid, No.

Q. Was the *Dorſetſhire* the neareſt Ship of our Fleet to the Fireſhip, when ſhe blew up?

A. Yes.

Q. What Sail had the Fireſhip, when you put off to her?

A. All the Sail ſhe could ſet, except Studding-ſails?

Q. Do you think you went faſter than the Fireſhip did?

A. Yes; for when we put off, we were Two Cables Length from her; and when ſhe blew up, we were but One.

Q. Did the *Real* fire at the Fireſhip?

A. Yes, ſome of her Quarter-Guns.

Q. Did the *Spaniſh* Ships coming up fire at her?

A. Yes, the headmoſt of them did; but their Shot fell ſhort of her: I ſaw them fall ſhort, about Two Cables Length.

Q. When the headmoſt Ship did ſo fire, how far might the Van of Mr. *Leſtock*'s Diviſion be from you?

A. About Three Miles.

Q. When you put off to aſſiſt the Fireſhip, how did thoſe Five Sail of *Spaniſh* Ships bear from you, as you rowed towards the Fireſhip?

A. Upon our Boat's Beam.

Q. Then you was rather between thoſe Ships and the Fireſhip?

A. Yes.

Q. Then you could plainly ſee, whether their Shot fell ſhort, or not?

A. Yes, I did ſee their Shot fall ſhort, about Two Cables Length.

Q. Was you within Hail of the Fireſhip?

A. We were within a Cable's Length.

Q. Did you meet the Fireſhip's People coming from the Fireſhip, in your Way to them from the *Dorſetſhire*?

A. Yes.

Q. What ſaid they to you?

A. I aſked them, If they wanted a Tow; and they ſaid, No.

Q. Did you ſee a *Spaniſh* Launch coming from the *Real*, to attack the Fireſhip?

A. Yes, I ſaw a *Spaniſh* Launch between the *Real* and Fireſhip.

Q. Did you ſee the Fireſhip fire at the *Spaniſh* Launch?

A. Yes.

Q. Were they rowing towards the Fireſhip?

A. Yes.

Q. Was your Boat manned and armed?

A. We had no Arms in the Boat.

Q. When you went to aſſiſt the Fireſhip, in what Poſition was the *Eſſex* from you?

A. About Half a Mile to Windward of the *Dorſetſhire*.

Q. How were the *Rupert* and *Royal Oak*, at that time?

A. I did not obſerve.

Q. When the *Spaniſh* Ships fired at the Fireſhip, where was Admiral *Mathews* then?

A. About a Mile to Windward of my Boat, juſt before the Fireſhip blew up; and then was lying to, or under an eaſy Sail, not bearing down.

Q. Did the *Dorſetſhire*, while you was in the Boat, fire at the Enemy?

A. No.

Q. What was ſhe doing then?

A. She was lying to.

Q. Was the *Real* then bore away?

A. Yes; and out of Gun-ſhot, before the Fireſhip paſſed by the *Dorſetſhire*,—about a Quarter of an Hour before ſhe paſſed by.

Q. How came the *Dorſetſhire* to get Three-quarters of a Mile from the Enemy?

A. The *Real* bore away, and the *Dorſetſhire* lay to.

Q. At what time did the Fireſhip blow up?

A. About Half an Hour after Four.

Q. Did you look at the Admiral about that time?

A. Yes.

Q. What Signal did you obſerve on board the Admiral?

A. I think there was a White Flag at the Mizen-peek; but I can't be exact where it was.

Q. Was the Signal for Battle hauled down?

A. No; not till after I returned to the *Dorſetſhire*.

Q. What is the Signal for Battle?

A. A Red Flag at the Fore-topmaſt Head.

Q. Are you ſure it was flying, when you returned to the *Dorſetſhire*?

A. It was, when I got on board the *Dorſetſhire*; but was ſoon afterwards hauled down.

Q. You took none of the Fireſhip's Men into your Boat?

A. No.

Q. Did you go on board the *Marlborough* at all?

A. No.

Q. Did your Boat go to the *Marlborough*?

A. No; it was hoiſted out; and I was ordered to go to tow the *Marlborough*; but, upon the Fireſhip's paſſing by, I was ordered to go and aſſiſt her.

Q. Do you really think, that you never fired at the Enemy, but your Shot could do Execution?

A. I am ſure we never did, from the firſt of the Engagement.

Q. And was the Admiral always right ahead, or upon your Weather-Bow?

A. Yes, always; I never ſaw him to Leeward, till he wore.

Q. When you engaged the *Hercules*, and Admiral *Mathews* had hauled off, was his Broadſide to you?

A. No; we fought about Two Points from the Wind, and he hauled off cloſe to the Wind.

Q. How then could you be directly in a Line with him, and bring his Three Maſts in One?

A. We did ſo before he hauled off; but, after the *Namur* hauled off, we had her Quarter open, and ſhe was to Windward.

Q. How long was you engaged with the *Hercules*, before Mr. *Mathews* left off Firing?

A. Admiral *Mathews* engaged about Eight or Ten Minutes, and fired about Two or Three Rounds; and then hauled off, and fired his Stern-chace for near Half an Hour afterwards.

Q. How long did you engage in all?

A. About Three Hours.

Q. How long was it from Admiral *Mathews*'s Hauling off, before the *Marlborough* loſt her Maſts?

A. The *Marlborough* loſt her Maſts a little after Three; and the Admiral hauled off about Half an Hour after One.

Q. What time did Admiral *Mathews* begin to engage?

A. About a Quarter after One, or ſomething better.

Q. Did you obſerve Mr. *Mathews* all the Time he was not engaged?

A. I ſaw him now-and-then.

Q. Did you obſerve, that he edged down again?

A. I did not obſerve that he did.

Q. While Admiral *Mathews* lay inactive, to the Time of the *Marlborough*'s Maſts going away, Did you obſerve any Signals made by the Admiral?

A. I did not obſerve any.

Q. How long was it before the *Marlborough* engaged, after the Admiral had begun to engage?

A. A few Minutes.

Q. At what time did the *Dorſetſhire* begin to engage?

A. I think, about the ſame time with the *Marlborough*; or the *Marlborough* rather began firſt.

Q. Do you remember any thing of Marines being ordered down to the Guns, from the Quarter-deck?

A. Yes.

Q. When were they ordered down?

A. Quickly after we began to engage.

Q. Why were they ordered down?

A. I cannot ſay.

Q. How many Marines had you on board, at firſt?

A. About Eighty.

Q. How many Men had you in all?

A. I can't tell how many we had on board.

Then he withdrew.

William Penrice, Midſhipman on board the *Dorſetſhire*, was called in, and ſworn.

His Depoſition was read, as follows:

William Penrice, *late a Midſhipman on board his Majeſty's Ship the* Dorſetſhire, *at the Time of the late Engagement off* Toulon, *between his Majeſty's Fleet and the Combined Fleet of* France *and* Spain, *on the Eleventh of* February, 1743, *maketh Oath*;

THAT he was quartered at the Braces, on board the ſaid Ship, during the ſaid Engagement: That, about a Quarter after One o'Clock, Admiral *Mathews* began to engage the *Spaniſh* Admiral; but the *Marlborough* ranging in between the Two Admirals, Mr. *Mathews* hauled his Wind; and afterwards the *Dorſetſhire* began to engage a Ship aſtern of the *Spaniſh* Admiral, who was rather to Windward of the *Spaniſh* Admiral, and which began firſt to fire at the *Dorſetſhire*, when ſhe was got within Half a Mile of her; upon which the *Dorſetſhire*'s Top-gallant Sails were taken in; and ſhe began to engage the ſaid *Spaniſh* Ship, and engaged her for an Hour, or more: Then the ſaid *Spaniſh* Ship bore away, with her Main-topſail Yard on the Cap, and her Colours down; but ſhe ſoon after hauled her Wind again, and run under the *Spaniſh* Admiral's Lee-Quarter: That while ſhe was Bearing away, the *Dorſetſhire* kept a continual Firing at her, except for about Eight Minutes: That the *Dorſetſhire* bore away, and edged nigher to the *Real*; and then we began to engage the *Spaniſh* Admiral, and engaged both her and the other *Spaniſh* Ship for about Half an Hour; and then the *Marlborough* having loſt her Main and Mizen Maſt, the *Dorſetſhire* immediately laid all aback; but the *Marlborough* falling aſtern, and the *Spaniſh* Admiral ſhooting ahead, obliged the *Dorſetſhire* to leave off Firing: Then her Main-topſail was immediately filled, and her People employed in repairing the Rigging and Guns, and pumping the Ship, and other neceſſary Matters, for about Half an Hour; and then our Captain gave Orders for the Headſails to be filled, the Jib to be hoiſted, and the Fore-buntlines and Leechlines to be overhauled; and bore away: But ſoon after hauled his Wind again; and the Gunner was called; who immediately came up, upon account, as this Deponent afterwards heard, of a Report given, That there was no Powder filled: That, ſoon afterwards, the *Dorſetſhire* bore away again; and the Lieutenants were ordered to be called; and they were called accordingly, by this Deponent, who went forward to call our Fourth Lieutenant on the Lower Gun-deck; and was above his Ancles in Water; and he ſaw the Lieutenant buſy putting a Truck on one of the Guns: That this Deponent then went on the Quarter-deck; and heard Captain *Burriſh* ſay to the Lieutenants; Gentlemen, I ſent for you only to ſhew you the Situation of our Ships to Windward of us; and likewiſe the Five Sail of our Enemy's aſtern of us; and I have Orders to go and engage the *Real*; which, you ſee, I am going to do: Then the Third Lieutenant, Mr. *Griffith* made Anſwer; and ſaid, We could do it with Safety: The Captain then replied, He did not aſk their Opinions; but you ſee, there are none of our Ships to Windward, that offer to bear down to our Aſſiſtance; ſo, in caſe that thoſe Five Sail of our Enemy's, ſhould oblige me to haul my Wind, and leave the *Marlborough*; and my Conduct ſhould be called in Queſtion; I hope, Gentlemen, you'll be able to anſwer for my Conduct: They made Anſwer, and ſaid, They could; and then went to their Quarters: And, in a ſhort time after, the *Dorſetſhire* began to engage the *Spaniſh* Admiral, at the Diſtance of about Two Cables Length; who, in a ſhort time, bore away, with his Stern quite to the *Dorſetſhire*, which ſhe kept a continual Firing into, as long as the Shot would reach: And then this Deponent ſaw the *Anne Galley* Fireſhip coming down ahead of the *Dorſet-*

Dorſetſhire; and Captain *Burriſh* hailed her; and aſked, If ſhe was going to the *Spaniſh* Admiral; or if he could be of any Service to her: To which, as this Deponent underſtood, Anſwer was made, No, no: And, at that time, the Fireſhip running aſtern of the *Dorſetſhire*, under her Lee-Quarter, this Deponent was of Opinion, That ſhe was not going to the *Spaniſh* Admiral; but ſoon perceiving, that ſhe took a Sweep round, he then ſaw, that ſhe was going to the *Spaniſh* Admiral; at which time the *Dorſetſhire*'s Barge was out, and going to aſſiſt the *Marlborough*; but Captain *Burriſh* ſent her to aſſiſt the Fireſhip's People, in bringing them on board; but, before ſhe reached the Fireſhip, the Fireſhip was blown up; and her People came on board the *Dorſetſhire*, in their own Boat: By this time, the headmoſt of the Five *Spaniſh* Ships engaged the *Dorſetſhire*, who returned her Fire for about a Quarter of an Hour; when Admiral *Mathews* wore Ship, and came down between the *Dorſetſhire* and the Enemy: Upon which the *Dorſetſhire* left off Firing, till the Admiral was paſt her; and then ſhe wore after him, and engaged the Five Sail, in paſſing by, they ſtanding to the Southward, and the *Dorſetſhire* to the Northward.

Wm. Penrice.

Sworn, this 31ſt of *Auguſt*, 1745. before me, *Cha. Fearne*, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Braces.

Q. When you hauled your Wind, and began to engage, Was you in a Line with the Admiral?

A. Yes; his Three Maſts were in One.

Q. What occaſioned your altering that Situation?

A. I imagined, by the Admiral's hauling off.

Q. How near was you to the Enemy?

A. Within about Half a Mile.

Q. Could your Shot do Execution?

A. Yes; I am partly ſure of it, becauſe their Shot went over us.

Q. Did you keep engaging her at that Diſtance?

A. Yes; till the *Hercules* bore away; and then we edged after her, nearer to the *Marlborough*.

Q. In what Poſition was the *Marlborough* then?

A. About a Point upon our Lee-Bow.

Q. What Diſtance was you from the *Marlborough*, when you engaged?

A. Something better than Three Cables Length: She bore upon our Lee-Bow.

Q. Was you ever, during the Action, in a Line with the *Marlborough*?

A. No, except after we bore down to engage the *Real*.

Q. What was you doing, when the *Marlborough*'s Maſts went away?

A. We were engaging the *Hercules* and *Real*; and, juſt at that time, the *Hercules* bore away; and I ſaw no more of her.

Q. Was you ever ſo near to the *Hercules*, as the *Marlborough* was to the *Real*?

A. No.

Q. Did you ſee the *Marlborough*'s Maſts going away?

A. Yes.

Q. What was you doing then?

A. Engaging the *Hercules* and *Real*; but the *Hercules* bore away to Leeward, and ſhot ahead withal; and I never ſaw her more.

Q. How far was you from the *Marlborough*, when her Maſts went away?

A. Near Two Cables Length; and ſhe was about a Point, or ſomething better, upon our Lee-Bow.

Q. What did you do for the *Marlborough*'s Aſſiſtance, immediately upon her loſing her Maſts?

A. We immediately backed our Topſails, in order to keep the *Real* open aſtern of her; but the *Marlborough* dropping aſtern, and the *Real* ſhooting ahead, brought the *Marlborough* between us and the *Real*; and we ceaſed Firing.

Q. How long did you lie all aback?

A. Till the *Marlborough* had ſhot quite in between us and the *Real*; and after that we filled our Headſails, and fell to repairing our Rigging, and ſecuring our Main-maſt.

Q. How long was you lying to then?

A. About Half an Hour.

Q. Did you begin to engage the *Real* and *Hercules*, before the *Marlborough* loſt her Maſts?

A. Yes: Near Half an Hour before the Captain ordered the foremoſt Guns to be fired at the *Real*, and the aftermoſt at the *Hercules*; and bid them be very careful not to fire, till they could plainly ſee their Mark.

Q. During that Half-hour, were the *Marlborough* and *Namur* both engaging the Enemy?

A. No; the *Namur* was not then firing:—She had before hauled off gradually, and kept firing her Stern-Chace at the *Real*; but when the *Marlborough*'s Maſts fell, ſhe was not fireing.

Q. What Diſtance was you from the *Real*, when you engaged both Ships?

A. About Three Cables Length from the *Real*, and ſomething more from the *Hercules*.

Q. In what Poſition was the *Hercules*, with regard to the *Real*, when you firſt began to engage?

A. In a Line; but, if any thing, I think, rather to Windward.

Q. How far aſtern of the *Real* was the *Hercules*, when you began to engage?

A. About Half a Mile.

Q. When you engaged the *Real* ahead of the *Marlborough*, At what Diſtance was you from the *Real*?

A. About

A. About Two Cables Length.

Q. How long did you engage her at that Diſtance?

A. About a Quarter of an Hour; till ſhe bore away.

Then he withdrew.

John Bearcroft, Midſhipman on board the *Dorſetſhire*, called in, and ſworn.

Q. Where was you quartered?

A. At the Fore-braces.

Q. Acquaint the Court what you know of the *Dorſetſhire*'s Behaviour in the Engagement.

A. About Three-quarters after Eleven o'Clock, I obſerved the Signal to engage, and we bore down about that time upon the Enemy, in a Line abreaſt with Admiral *Mathews*; the Enemy being in a Line ahead, to Leeward of us: About a Quarter after One, Admiral *Mathews* began to engage the *Spaniſh* Admiral; and, ſoon after, the *Marlborough* engaged her alſo: At which time the *Dorſetſhire* bore down to the Ship aſtern of the *Spaniſh* Admiral, which, I have been told, was called the *Hercules*; when we came within Four Cables Length of her, ſhe began to fire very briskly at us: We then furled our Top-gallant-ſails, hauled our Wind, and gave her a Broadſide; and continued engaging her for ſomething more than an Hour, when ſhe bore out of the Line for a little time: I then obſerved, that her Main-topſail Yard was down upon the Cap; her Fore-topſail Yard hung by the Lifts, about Half Maſt down; her Mizen-yard was canted; which made us imagine, that her Derrick was ſhot away, and her Mizen-bowline: At that time we overhauled our Fore-buntlines and Leechlines. — In a ſhort time after ſhe hauled her Wind again, and went under the *Real*'s Lee-Quarter: By that time we were ſhot up nearer to the *Marlborough*, and were about Four Cables Length from the *Real:* I then obſerved the *Marlborough* bore about a Point upon our Lee-Bow, diſtant about Two Cables Length; and the *Real* was about Three Points before our Beam; and the *Hercules* was rather abaft our Beam; and, at that time, above Four Cables Length diſtant: Orders were then given to point the foremoſt Guns at the *Real*, and the aftermoſt Guns at the *Hercules*; and we engaged both Ships about Half an Hour, before the *Marlborough*'s Maſts were ſhot away: Then we backed our Fore-topſail; but ſoon after the *Marlborough* dropt aſtern between us and the *Real*, which ſtopped our Firing; the *Hercules* at that time going to Leeward, and ahead withal, out of the Line: Then we brought to, and ceaſed Firing about Half an Hour: Then we looſed the Top-gallant-ſails, hoiſted the Jib, and ſet the Foreſail, and were then bearing down again; but all of a ſudden we luffed up in the Wind again, there being a Report, that there was no Podwer filled; but that Miſtake being ſoon cleared up, we bore away again; and went ahead of the *Marlborough*, and engaged the *Real* within Two Cables Length, or nearer, for about a Quarter of an Hour, when ſhe bore away to Leeward: We continued our Fire for ſome time, till ſhe got a great Way to Leeward; and then we brought to, and furled our Top-gallant-ſails: Soon after the *Anne Galley* Fireſhip came under our Lee-Bow, and Captain *Burriſh* hailed her, asking her, If ſhe was going down to the *Real*; and if he could be of any Aſſiſtance to her. I did not underſtand the Anſwer, but it was the Opinion of other People, that they anſwered, No, no. She went upon our Quarter ſoon after, and bore away directly for the *Real:* Our Barge was hoiſted out ſome little time before, in order to aſſiſt the *Marlborough*; but was then ordered to go and aſſiſt the Fireſhip; but, before ſhe could reach the Fireſhip, the Fireſhip was blown up. Soon after the Fireſhip was blown up, the Two headmoſt of the Five *Spaniſh* Ships coming up, began to engage us; and engaged us ſome little Time, before Admiral *Mathews* wore, and ran between them and us: Then we looſed the Top-gallant-ſails, hoiſted the Jib, and let drop the Foreſail, and wore after him, and engaged thoſe Five *Spaniſh* Ships in paſſing them; they ſtanding to the Southward, and we to the Northward.

Q. When you hauled up to engage the *Hercules*, Did you bring your Ship exactly in a Line with the Admiral?

A. Yes.

Q. How long did the Admiral engage, before he hauled off?

A. He fired Three or Four Broadſides: He hauled off after we had fired about One Broadſide, and hauled our Foreſail up.

Q. At what Diſtance did you engage the *Hercules?*

A. About Four Cables Length.

Q. Did your Shot reach her?

A. Yes; it's evident they did, becauſe they diſabled her.

Q. Was not the *Marlborough* near enough to engage her?

A. Yes.

Q. Did you ſee the *Marlborough* engage her?

A. No; I believe ſhe did not engage her.

Q. Do you think the *Marlborough*'s Quarter-Guns would not have reached the *Hercules?*

A. Yes; they would have reached; but, I believe, they could not have brought any Guns to bear upon her, except the Stern-Chace.

Q. After the *Hercules* bore away, and got under the *Real*'s Quarter, Do you think the *Marlborough* did not engage her?

A. I never ſaw her.

Q. Was not the *Marlborough* nearer the *Hercules* than you was?

A. No, not at firſt; but, when ſhe ſhot under the *Real*'s Quarter, the *Marlborough* might be nearer to her.

Q. When the *Hercules* got under the *Real*'s

Quarter, Could not the *Marlborough*'s Quarter-Guns have been brought to bear upon her?

A. I am not a Judge of that; doubtleſs their After-Guns might; but I did not ſee any fired at her.

Q. When the *Hercules* got under the *Real*'s Quarter, Was you in a Line with the *Marlborough?*

A. No: She was about a Point upon our Lee-Bow.

Q. Did you obſerve the *Marlborough*, when her Maſts were carried away?

A. Yes.

Q. What was you then doing?

A. We were engaged with the *Hercules*, and the *Real*; and the *Hercules* juſt then bore away to Leeward, and ahead of the *Real*; and never came into the Line again; and then we back'd our Topſails.

Q. How did the *Marlborough* then bear of you?

A. About a Point upon our Lee-Bow.

Q. How far was the *Hercules* from the *Real*, when the *Marlborough*'s Maſts were gone?

A. About Two Cables Length; and lay upon the *Real*'s Lee-Quarter.

Q. What Diſtance was you then from the *Marlborough?*

A. About Two Cables Length.

Then he withdrew.

Captain *John Mountagu*, late Lieutenant of the *Buckingham*, was called in, and ſworn.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. Did you ever obſerve the *Dorſetſhire* engage the *Real* to Leeward of the *Marlborough?*

A. Yes.

Q. At what time?

A. About a Quarter after Three, or between Three and Four o'Clock.

Q. How long did ſhe engage then?

A. About Half an Hour; and was very cloſely engaged.

Q. How far was you diſtant from the *Dorſetſhire* then?

A. About Four or Five Miles.—I was then upon the Quarter-deck with Captain *Towry*, and could ſee her very plain.—It was about a Quarter of an Hour after the *Marlborough* loſt her Maſts, that I ſaw her Top-gallant-ſails ſet; and ſhe bore down ahead of the *Marlborough*, and engaged the *Real*.

Q. How did the *Dorſetſhire* bear from you at that time?

A. About a Point or Two upon our Starboard-Bow, when ſhe was going down ahead of the *Marlborough*.

Q. How cloſe might the *Dorſetſhire* then be to the *Real?*

A. I ſaw the *Real*'s Shot fly over, and all round the *Dorſetſhire*; and I ſaw them go above a Cable's Length over her.

Q. What Diſtance was you then from her?

A. Between Four and Five Miles: We were the Second Ship aſtern of the Vice-Admiral.

Q. When the *Real* bore away, Did you ſee the Fireſhip bear down?

A. Yes, I ſaw the Fireſhip bear down.

Q. Do you think, that the *Dorſetſhire* forced the *Real* to bear away; or the Fireſhip's coming down?

A. I think nobody can tell that, but the Captain of the *Real*:—But I ſaw the *Real* bear away, while the *Dorſetſhire* was engaging her, and before the Fireſhip got to the *Real* ſome time.

Q. Did you ever obſerve the *Spaniſh* Admiral to luff up again, after he bore away?

A. I can't ſay, that I did.

Q. Did you ſee the *Real* diſabled?

A. Yes: Her Main-yard was ſhot in Two, and came down upon the Deck.

Q. Did you obſerve what Sail the *Real* had ſet, when ſhe firſt bore away?

A. Her Mainſail and Foreſail, and the Fore-topſail Yard down upon the Cap.

Q. Did you obſerve her diſabled, before, or after, the *Dorſetſhire* was engaged with her?

A. I cannot ſay particularly whether before or after.

Q. Was there not a great Diſtance of Time between the *Namur*'s Firing and the *Dorſetſhire*'s engaging the *Real* thus cloſe?

A. No:—I ſaw the *Namur* firing her Stern-Chace at that time.

Q. How did the *Namur* at that time bear from the *Real?*

A. Upon the *Real*'s Weather-Bow; and, I think, within Gun-ſhot.

Q. How was the *Dorſetſhire* with reſpect to the *Namur?*

A. She was upon the *Namur*'s Lee-Quarter, and to Leeward of the *Marlborough*.

Q. How did Admiral *Mathews* bear, with reſpect to you?

A. Always upon the Lee-Bow; and the Vice-Admiral always upon the Weather-Bow.

Q. When the *Dorſetſhire* was cloſely engaged, How far did ſhe appear to you to be open from the Admiral?

A. A good Way open—About Half a Mile—About Four Points of the Compaſs.

Q. Do you remember how many *Spaniſh* Ships were aſtern of the *Real?*

A. There were Five, including her Second.

Q. How far diſtant was you from the *Spaniſh* Ships then?

A. About Two or Three Miles; becauſe when Mr. *Leſtock* fired Two Broadſides at the ſternmoſt of thoſe Ships, the Shot went above Half-way.

Q. How did the headmoſt of thoſe Ships, at that time, bear from Mr. *Leſtock?*

A. Rather before his Beam.

Q. Did not the headmoſt of thoſe Four *Spaniſh* Ships fire at the Fireſhip?

A. Yes,

A. Yes, within Gun-ſhot; for I ſaw their Shot fall cloſe on board the Fireſhip.

Q. What Diſtance do you think Mr. *Leſtock* was then from the *Spaniſh* Ships?

A. About Three Miles.

Q. Did you obſerve the *Dorſetſhire* when ſhe firſt began to engage?

A. No; I do not remember to have ſeen her, until ſhe bore down ahead of the *Marlborough*, to engage the *Real*.

Q. Did you ever ſee the *Dorſetſhire* upon the *Buckingham*'s Larboard-Bow?

A. No; I never obſerved her upon our Weather-Bow.

Q. Did you ſee the *Marlborough*'s Maſts go away?

A. I ſaw her, after they were gone.

Q. At what o'Clock did you ſee the *Marlborough*'s Maſts gone?

A. About Three o'Clock.

Q. Did you obſerve the *Dorſetſhire* then?

A. I did; and it was juſt after that Time that ſhe bore down to engage the *Real*.

Q. Did you obſerve the Admiral's firſt Firing?

A. I did; but I did not ſee any thing of the *Dorſetſhire*, till ſhe bore down ahead of the *Marlborough*.

Q. Could the *Spaniſh* Ships aſtern have weathered upon the *Dorſetſhire*?

A. Yes, I think they could.

Q. Could Mr. *Leſtock*'s Diviſion have cloſed the Line as ſoon as thoſe Ships?

A. I think Mr. *Leſtock* could have cut off thoſe Four Ships; but I don't know whether he could have cloſed the Line ſo ſoon as they could theirs.

Court. If Mr. *Leſtock* could have cloſed the Line as ſoon as thoſe Ships, then the *Dorſetſhire* could have been in no Danger from them.

Q. Do you think the *Dorſetſhire* behaved like an *Engliſh* Man of War at the Time you ſaw her?

A. Yes, at the Time I ſaw her, I think ſhe was doing the Duty of a *Britiſh* Man of War.

Then he withdrew.

Captain *De L'Angle*, of the *Barfleur*, called in, and ſworn.

Priſoner. When I was put under Arreſt by Captain *De L'Angle*, and underſtood I was to take my Tryal, I thought it neceſſary, That the Secretary to Admiral *Rowley*, who acted as Deputy Judge-Advocate, ſhould take the Depoſitions of ſuch of my Ship's Crew who were not to come home with me, relating to my Conduct in the Engagement: And I deſire Captain *De L'Angle* will acquaint the Court, what he knows of that Matter.

Witneſs. Captain *Burriſh* did apply to the Admiral for that Purpoſe; but, having a fair Wind, and being to ſail the next Morning, there was not Time to do it.

Priſoner. In Conſideration of which, I hope the Court will think it proper, That the Certificates from the Secretary, and Captain *Toll* (who ſucceeded me in the Command of the Ship), of what they found the Ship's Company were willing to ſwear in my Behalf, may be read.

The Court ſaid, Such Certificates could not be admitted as any ſort of Evidence; and therefore it could be to no Purpoſe to read them.

Priſoner aſked,

Q. I deſire you will give an Account how my Ship's Company behaved at the Time you came on board to put me under Arreſt, and gave the Charge of the *Dorſetſhire* to the Firſt Lieutenant, until another Officer came on board.

A. When I called up the Hands to tell them to obey the Firſt Lieutenant, and that the Captain was under an Arreſt, they all expreſſed great Concern; and ſaid, They wiſhed every body in that Action had behaved as well as Captain *Burriſh* had done.

Court aſked,

Q. At what Diſtance of Time from the Engagement was it that this happened?

A. It was in *May* laſt, about Fifteen Months after the Action.

Q. When you went on board the *Dorſetſhire* to put Captain *Burriſh* under Arreſt, and you had called the Ship's Company up to acquaint them therewith, Did any one of the Ship's Company offer himſelf as an Evidence for the Crown againſt Captain *Burriſh*?

A. No, not a ſingle Man.

Priſoner. Nobody there imagined, That ſuch a Charge could have been brought againſt me as has been: I apprehend the Admiral would have ſuſpended me upon the Spot, if he had apprehended I miſbehaved in the manner I am charged.

Then the Witneſs withdrew.

The Priſoner then ſaid, He did not deſire any more Witneſſes to be called: And aſking the Judge-Advocate, If he ſhould be called in again before Judgment was paſſed upon his Behaviour; the Court told him, If he wanted any time to digeſt his Minutes, they would adjourn: That they ſhould require Time to digeſt their own Minutes; and, if he deſired any Time to recollect his Memory, they would allow it to him, and adjourn.

The Priſoner ſaid,

That what he had to ſay flowed from Truth and Juſtice, and he wanted nobody to prompt him; and that what he had to obſerve, was ſo very ſhort, that it was not worth while to adjourn.

In general, with regard to the Evidence againſt me, there are many Contradictions, even by Perſons who belonged to the ſame Ship; not Two Witneſſes of any one Ship agree in their Evidence.

I am

I am charged with not being within Point-blank of the Enemy; but my Evidence have proved, That there was a Shot went through my Main-maſt, and that it went through directly in a Line; therefore I muſt then have been within Point-blank, or elſe it would have gone through in a Curve, and not in a direct Line: And the ſame may be ſaid as to the Shot, which came through upon the Quarter-deck; and therefore I hope, that is an Anſwer to that Article of the Charge.

I am charged with the Loſs of the Fireſhip: I had no Orders to go down to cover the Fireſhip; and I could not divine where ſhe was going to, till ſhe came paſt me; and, as ſoon as I knew ſhe was going to the *Real*, I gave her all the Aſſiſtance that was in my Power, by ſending my Barge to take up her Men.

I am charged with not being in my Station: As to that, by all my Evidence, it has been proved, That I was in a Line with the Admiral, or rather to Leeward of him: And here I beg Leave to ſubmit, Whether, though a Ship ſhould not be within point-blank Shot; yet, if ſhe was in a Line with her Admiral, and the Enemy began to fire at her, it would not have been the Commander's Duty to have returned the Fire.

With regard to aſſiſting the *Marlborough*, I ſubmit, Whether I have not fully proved, That I did aſſiſt her as much as I could: I am very ſorry for her Diſtreſs; but ſurely it was from the greateſt Raſhneſs in a Commander that ever was known; for, had ſhe not by his Raſhneſs gone in between the *Namur* and *Real*, but kept aſtern of the *Namur*, they muſt have deſtroyed or taken the *Real*; but, by that Raſhneſs, ſhe rendered the *Namur* intirely incapable of any Service.—It has been aſked, Why I did not go aſtern of the *Marlborough*, and aſſiſt her before I had any Orders: But I beg Leave to obſerve, That when the Admiral's Orders came, it has been proved, that I was in a Line with the Admiral, or rather to Leeward of him; and I had no Inſtruction to break the Line without Orders: And I hope it has been proved, That when I had Orders from the Admiral, I immediately obeyed them.

I beg Leave to clear up the Situation of the *Dorſetſhire*, from the Repreſentations given of it by Mr. *Leſtock* in his Plans.—Firſt, Mr. *Leſtock* has placed me to Windward of all; whereas all the Witneſſes have proved, That I was greatly to Leeward of Three: There is one Situation proved to be falſe.—So at the time the Fireſhip blew up, he has placed me to Windward of the *Marlborough*: But, I hope, I have fully proved, to the Satisfaction of the Court, that I was then to Leeward of the *Marlborough*; and that ſhe was then towed conſiderably to Windward of me.—So, when Admiral *Mathews* wore, he has put me in a Situation, as if I was the fartheſt Ship from the Enemy: But I hope I have clearly proved, That I was then the neareſt Ship: And what is clear Evidence of my being nearer than any of the other Ships, is, That the Fireſhip's Men came on board of me; for Men in Diſtreſs naturally take the firſt Place of Refuge they can come at. And I hope, before the Tryals are over, Mr. *Leſtock* will be proved as baſe, as his Plans are falſe.

Here the Court obſerved, to the Priſoner, That none of thoſe Plans had been given in as Evidence againſt him; and that they had no Weight with the Court.

If Admiral *Mathews* had diſapproved my Conduct, or thought me culpable, he would have removed, or ſuſpended me: And, as a further Proof, that I was not ſuſpected of Misbehaviour by any of the Commanders there, Admiral *Rowley*, afterwards, gave me a ſeparate Command: And now, to be loaded with ſo much Infamy, it is too much for Man to bear.—I had rather be ſhot, than ſuffer under ſuch Ignominy—I will ſubmit it to the Court.

Being asked, by the Court, If he would recollect himſelf, and make any further Obſervations; he ſaid, He had nothing further to ſay; but would ſubmit it to the Court.

Then the Marſhal was ordered to take away the Priſoner; and the Audience was told to withdraw.

Then the Court obſerving, that the Priſoner appeared to be very much affected with his Situation; they deſired the Judge-Advocate to go out to him, and to let him know, That, if he deſired Time to make any farther Obſervations, they would adjourn till To-morrow Morning. The Judge-Advocate, accordingly, went, and acquainted the Priſoner therewith; who replied, That he thanked the Court for their Indulgence; but that he was ſo ſenſibly touched with the Weight of the Infamy thrown upon him, that he was not able to recollect himſelf ſufficiently to make further Obſervations; and therefore would ſubmit to the Juſtice of the Court.

The Judge-Advocate having acquainted the Court with the Priſoner's Anſwer; it was moved, That the Conſideration of the Evidence, relating to Captain *Burriſh*'s Conduct, might be deferred, till the Court had gone through the whole Evidence that might be given at the enſuing Tryals, relating to all the Officers accuſed of Miſconduct; as the doing ſo, might enable the Court the better to determine upon Captain *Burriſh*'s Conduct therein: But a Debate ariſing thereupon, the Court agreed, That the Judge-Advocate ſhould take the Opinion of ſome Civilians, upon this Point.

Then the Court adjourned till Monday *Morning next, at Eight o'Clock.*

The

FH
MVSEVM
BRITANNICVM

The Eighth, Ninth, and Tenth Day's TRYAL of Captain GEORGE BURRISH,

On Board His MAJESTY'S *Ship the* London, *at* Chatham,

MONDAY, the 7th of *October*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent as were on *Thurſday* laſt, except Captain *Elliott*.

The Audience were ordered to withdraw.

The Preſident communicated to the Court a Letter from Mr. *Corbett*, to Captain *Elliott*, in Return to his Application to the Lords of the Admiralty, for his Abſence at the Court-Martial to be diſpenſed with, on account of his ill State of Health; wherein Mr. *Corbett* acquainted Captain *Elliott*, That their Lordſhips would do nothing in it; but left it to the Judgment of the Court-Martial: And Captain *Colby* acquainting the Court, That, to his Knowlege, Captain *Elliott* was in a very bad State of Health, the Court agreed to diſpenſe with his Abſence.

The Judge-Advocate then laid before the Court the Queſtion he had ſtated to Doctor *Paul*, Doctor *Straban*, and Doctor *Lee*, in relation to the Point, upon which the Court were in Doubt at their laſt Adjournment; with the Opinion of thoſe Gentlemen thereupon, as follows; *viz.*

Q. Can the Court legally defer paſſing Sentence upon Captain *Burriſh*, till they have gone through the whole Evidence, relating to all the accuſed Officers? And, if they can, and ſhould ſo defer it, Can they conſider the Evidence, given at the enſuing Tryals, as in any manner affecting Captain *Burriſh*, and admit the ſame to have any Weight, in the forming their Judgment and Sentence upon his Conduct?

We have conſidered this Queſtion; and are of Opinion, That there is no Law, which prohibits a Court-Martial from taking time to give a Sentence; but we apprehend it to be moſt proper, and moſt agreeable to Practice, to give a Sentence upon a Tryal for a capital Offence, before the Court proceeds to any other Tryals for Offences of the like nature.

And we are very clearly of Opinion, That they cannot conſider the Evidence given at any enſuing or preceding Tryals, as in any manner affecting Captain *Burriſh*; and that they cannot, by Law, admit ſuch Evidence to have any Weight in forming their Judgment, and giving Sentence upon him.

G. Paul.
Will. Straban.
Geo. Lee.

Doctors Commons, Oct. 4th, 1745.

The Priſoner was then brought into Court, and the Audience admitted.

The Priſoner was told, That the Court being ſatisfied about a Point of Law, which occaſioned their laſt Adjournment, they were ready to hear any thing farther he had to offer in his Defence.

The Priſoner deſired of the Court, That Captain *Limeburner* might be heard as to the Character of *Jude*, the Gunner of the *Dorſetſhire*: Upon which, Captain *Limeburner* was ordered to be called in.

Mr. *Sharpe*, one of the Proſecutors for the Crown, objected to it; as he apprehended the Evidence had been cloſed, and the Priſoner made his Defence, upon the laſt Day of the Court's Meeting; Captain *Burriſh* having then declared, he had no more Witneſſes to examine, and had ſubmitted his Obſervations before to the Court, upon the whole Matter: — That he did not mention this, ſo much on account of objecting to Captain *Burriſh*'s examining this Witneſs, as being out of Time, as for that the Proſecutors had received no Notice from Captain *Burriſh* of this his Intention to examine into the Character of *Jude*; and, conſequently, could not be prepared, as otherwiſe they might have been, with Evidence, in Support of his Character; and, therefore, ſubmitted to the Court, If they thought proper to indulge Captain *Burriſh* with examining Captain *Limeburner* to impeach *Jude*'s Character, Whether they would not give the Proſecutors a ſhort time to produce Witneſſes in Support of it.

The Court, after a little Debate upon the Matter, agreed, That Captain *Burriſh* was ſtill at Liberty to make any farther Defence.

Captain *Limeburner*. — It is owing to an Accident, that I came to know, that this Man was a Witneſs againſt his Captain; for, upon accidentally meeting him laſt *Saturday*, in the Street at *Rocheſter*, I asked him, What Ship he belonged to? He anſwered, That he belonged laſt to the *Dorſetſhire*; and, upon hearing, that he had been examined as a Witneſs againſt Captain *Burriſh*, I recollected what I thought would ſhew him to be a Man of no Character; and I know him to be a Villain, a wicked Man, and a Thief; and, therefore, if the Court pleaſes, that he may confront me, I will relate what I know of him.

Jude was called in; and Captain *Limeburner* was ſworn.

Court aſked,

Q. What do you know of *Jude?*

A. I know him to be a Man of a general bad Character, and a diſhoneſt Man: An Inſtance of his Villainy I know; I detected him in it; and, if he had had the Puniſhment he deſerved, he would not have been here now to have given Evidence againſt his Captain. — He ſtole the King's Ammunition; and he begged me, in regard to his Family, that I would not inform againſt him; and, as I ſtopp'd its going out of the Ship, in Compaſſion to his Family, I did not acquaint the Captain with it. — I know him to have been a Thief, and to have ſtole the King's Ammunition; and, (looking to *Jude*) you know this to be true.

Jude. I don't know it to be true.

Q. Relate the Particulars of what you know of his Diſhoneſty.

A. When I was Firſt Lieutenant of the *Deptford*, about Seven Years ago, I heard it obſerved, That the Gunner was grown rich; and nobody could tell how: This occaſioned me to reflect upon the frequent Applications the Gunner made for the Key of the Powder-room; and, when he applied to me for it, a Day or two after, I ſaid to him, Gunner, You frequently want this Key: He turned from me; but I called him back, and gave him the Key: Shortly after, his Servant was going away with a Bundle; which ſeemed to be foul Linen: As it was going to be handed over the Side, I deſired it might be brought to me; and I ſent for the Gunner; and, upon opening it, there were ſeveral Cartridges of Gunpowder concealed in it: I then ſaid, Gunner, What ſay you to this? You are ruined. He ſaid, I hope you won't ruin me, Sir; pray conſider my Family: And, as I had prevented his carrying the Powder away, Compaſſion to his Family prevented my repreſenting the Affair to his Captain. — I aſſure you, this is true; and, I believe, no Gentleman here queſtions my Veracity.

Jude ſaid, He had Letters from Officers whom he had ſerved under, which would ſhew, that they had a good Opinion of him; and offered to produce one he had about him, from Captain *Moſtyn:* And one of the Members of the Court, who looked at it, ſaid, It was Captain *Moſtyn*'s Writing: But the Priſoner objecting to its being read, as the Court would not ſuffer the Certificates he offered to them to be read, the Letter was not read.

Then Mr. *Sharpe* obſerved to the Court, That here was only one ſingle Perſon produced, to impeach the Credit of this Man's Teſtimony; and that a ſingle Witneſs had never, during his Obſervation, been held ſufficient to invalidate the Character of another Witneſs: That what was imputed to *Jude*, was a ſingle Fact, of Seven Years ſtanding, and *non conſtat*; but that *Jude*'s Servant might come by the Cartridges, either honeſtly, or without *Jude*'s Knowlege: — That *Jude* had been ever ſince in the Service; and that it was plain, Captain *Burriſh* himſelf did not think his Character impeachable, he not ever having accuſed him of any Misbehaviour, nor having, while in his Defence, objected againſt, or offered any Witneſs to impeach his Character; nor did he, even now, produce any of his Ship's own Crew to do it. — That it was plain, from Captain *Limeburner*'s own Account, that Captain *Burriſh*'s calling him as a Witneſs, was owing to a voluntary Information given him by Captain *Limeburner*, of what he now declared to the Court; which (without meaning to caſt the leaſt Imputation on Captain *Limeburner*), he ſubmitted to the Court, had in many Caſes been conſidered as tending to leſſen the Weight of Evidence given under ſuch Circumſtances, eſpecially, as the Proſecutors had no previous Notice thereof, to be prepared with Witneſſes on the Part of the Crown, to encounter it: And ſubmitted to the Court, If they would not allow the Proſecutors a ſhort Time, to produce Witneſſes in Support of *Jude*'s Character; or, at leaſt, aſk Mr. *Jude*, Whether there might not be accidentally on board, ſome Perſon who might be able to ſpeak in Support of his Character.

Priſoner. Mr. *Sharpe* has obſerved, that I did not object to this Man's Evidence, when he was examined; and that I have not complained of any Misbehaviour in him: But there are many Officers, who may have been guilty of Crimes on board, and have not been found out for ſome time after: But, as I diſcovered this Inſtance, it was proper to give it in Evidence. — I have not correſponded with Captain *Limeburner* for many Years, and never ſpoke to him, ſince he came down to this Court-Martial.

Jude was then aſked, If he had any body in the Way to vindicate his Character: He ſaid, There were many about the Town; but he believed, none in the Way, except

Richard Hamilton, Boatſwain of the *Namur*, who was called in, and ſworn.

Q. Do you know any thing of *Jude*'s Character?

A. I was about Three Years Boatſwain of the *Deptford*, with Captain *Cornwall*, about Ten Years ago; and Mr. *Jude* was Gunner at the ſame time, but not when Captain *Limeburner* was Lieutenant of her; and I never knew, that he touched any thing in that Ship, or any other: I never heard any Harm of him, or any body lay any Crime to his Charge.

Q. Was he ever under Confinement?

A. No: — Never.

Q. Do you think the Gunner would take a falſe Oath, in caſe of Life and Death?

A. I don't think he would.

Then he withdrew.

Priſoner. It is natural for any Man, who is a Thief, to ſay any thing to ſcreen himſelf: There was not one Officer in the Ship, from the Firſt Lieu-

Lieutenant to the Cook, that would converſe or eat with him; but all thought him a ſad Fellow.

Court to the Priſoner. Did you ever know him guilty of any Neglect on board your Ship, or not do his Duty as an Officer?

Priſoner. No; as far as I knew, he did his Duty; otherwiſe I ſhould have obliged him to do it; I ſhould not have ſuffered him to have neglected his Duty.

The Court aſked the Priſoner,

If he had any thing further to offer. — *He ſaid,* He had nothing further to offer; but relied upon the Evidence that had been given, and the Juſtice of the Court.

The Marſhal was ordered to remove the Priſoner out of Court; and the Audience were told to withdraw.

The Judge Advocate then read the Charge againſt the Priſoner, to the Court: And the Court entered upon Conſideration of the Evidence that had been given before them: And, after deliberating ſome time thereupon, the following Queſtion was propoſed; and, being approved by the Court, was put, as follows; *viz.*

Is it the Opinion of the Court, That the *Dorſetſhire* was in a Line with the Admiral, when ſhe, the *Dorſetſhire*, was firſt brought to, to engage?

And the Court were of Opinion (Fourteen to Six), That the *Dorſetſhire* was not then in a Line with the Admiral.

The Court then agreed, That the following Queſtion ſhould be put: Which was accordingly done; *viz.*

Is it the Opinion of the Court, That the *Dorſetſhire* was in a Line with, or as far to Leeward as, the Admiral, when the Admiral was hauled off, ſhortly after he began to engage? And did ſhe continue ſo to the time of the *Marlborough*'s loſing her Maſts?

The Court unanimouſly agreed, That ſhe was as far to Leeward as the Admiral, after he had hauled off; and that ſhe continued ſo, to the Time of the *Marlborough*'s loſing her Maſts.

The following Queſtion was then propoſed; *viz.*

When an Admiral engages, with a Signal for the Line, and Signal for Battle, flying; and, from any Accident, afterwards hauls off, and remains ſo, with both thoſe Signals flying — Is it the Opinion of the Court, That the Admiral's Hauling off, occaſions an Alteration in the Line? Or, notwithſtanding his Hauling off, ought not the reſt of the Fleet to form, and continue in the Line, the ſame as if the Admiral had remained in his firſt Poſition?

But, after ſome Debate, the following Queſtion was propoſed, in its ſtead:

When the Admiral hauls out of the Line, and remains ſo for ſome Accident, although the Signal for the Line is flying, and the Signal for Battle then out; Ought not the other Ships continue in the Line doing their Duty, engaging the Enemy?

And after ſome farther Debate, upon thoſe Two propoſed Queſtions, it was put to the Vote, Whether the long or the ſhort Queſtion ſhould be put: And it being carried in favour of the latter, that was accordingly put; *viz.*

When the Admiral hauls out of the Line, and remains ſo for ſome Accident, although the Signal for the Line is flying, and the Signal for Battle then out; ought not the other Ships to continue in the Line, doing their Duty, engaging the Enemy?

And the Court unanimouſly agreed, That if an Admiral ſhould be under the Circumſtances mentioned in the Queſtion, the other Ships ought to continue in the Line, doing their Duty, engaging the Enemy.

The following Queſtion was afterwards propoſed, agreed to, and put accordingly; *viz.*

Is it the Opinion of the Court, That Captain *Burriſh* (before the *Dorſetſhire* was brought to engage) ought to have bore down, as far to Leeward, as where the Admiral firſt began to engage, notwithſtanding the Admiral might be hauled off before the *Dorſetſhire* had got ſo far to Leeward?

And the Court unanimouſly agreed, That Captain *Burriſh* (before the *Dorſetſhire* was brought to) ought to have bore down as far to Leeward, as where the Admiral firſt began to engage.

The under-mentioned Queſtion was then propoſed, agreed to, and put; *viz.*

Is it the Opinion of the Court, That Captain *Burriſh* did his utmoſt to bear down upon, fight, or engage with his Majeſty's Enemies, as he ought to have done, from the Time the Engagement began, to the Time of his receiving a Meſſage from the Admiral, to bear down to aſſiſt the *Marlborough*, and engage the *Real?*

And the Court agreed unanimouſly, That he did not do his utmoſt within that time.

Then the Court adjourned till To-morrow Morning, at Eight o'Clock.

Tueſday the 8th of *October*, 1745.

THE Court met, according to Adjournment, the ſame Members being preſent as were Yeſterday: And, the Auditors being withdrawn, the Minutes of the laſt Meeting were read: And then the Court proceeded to a further Conſideration of the Evidence: And, after they had deliberated ſome time thereupon, the following Queſtion was propoſed; *viz.*

Is it the Opinion of the Court, That Captain *Burriſh* kept above the Diſtance of point-blank Shot from the Enemy during the greateſt Part of the Engagement?

After

After ſome Debate upon the Queſtion, it was propoſed to the Court, Whether they would agree in the following Opinion thereupon; *viz.*

That as a Bar-ſhot did come on board the *Dorſetſhire*, in the Firſt Part of the Engagement; and it does not appear by any Evidence, That Captain *Burriſh* ever hauled off from the Enemy, after the Beginning of the Engagement; he muſt have been within extreme Point-blank during the greateſt Part of the Engagement.

The Word *greateſt* was excepted to, and the Word *great* propoſed in its room: Upon which it was put to the Vote, Whether the Word *greateſt* ſhould ſtand, or the Word *great* be ſubſtituted in its ſtead? And the Court agreed (Fourteen to Six), That the Word *greateſt* ſhould remain.

Then the Anſwer propoſed to the preceding Queſtion was ſtated Queſtion-wiſe, as follows; *viz.*

Is it the Opinion of the Court, That, as a Bar-ſhot did come on board the *Dorſetſhire*, in the Firſt Part of the Engagement; and it does not appear by any Evidence, That Captain *Burriſh* ever hauled off from the Enemy, after the Beginning of the Engagement; he muſt have been within extreme Point-blank during the greateſt Part of the Engagement?

And the Court agreed (Fifteen to Five), That he muſt have been within extreme Point-blank during the greateſt Part of the Engagement.

The following Queſtion was then propoſed, agreed to, and put; *viz.*

As it appears to the Court, That the *Dorſetſhire*, after the *Marlborough*'s Maſts were gone, lay by inactive, for about half an Hour, with the *Marlborough* between her and the *Real*; Is it the Opinion of the Court, That ſhe had received ſuch Damage, as made her Lying by, during that time, neceſſary?

And the Court unanimouſly agreed, That ſhe had not.

A Queſtion was then propoſed, agreed to, and put, as follows; *viz.*

Is it the Opinion of the Court, That Captain *Burriſh*, upon receiving the Admiral's Meſſage, did bear down, and engage the Enemy, agreeable to the Orders he received? Or, Did he continue to Windward, pretending he had no Powder filled?

And the Court were thereupon unanimouſly of Opinion, That, as ſoon as Captain *Burriſh* underſtood the Admiral's Meſſage, he bore away, and hauled up again only for a few Minutes, till a Miſtake of the Firſt Lieutenant, about a Want of Powder, was cleared up; and then he immediately bore away again, and aſſiſted the *Marlborough*, by engaging the *Real* for about a Quarter of an Hour, when the *Real* bore away.

The following Queſtion, being then agreed to, was put; *viz.*

Is it the Opinion of the Court, That a Man of War of the Line of Battle ought to bear down and cover a Fireipſh (whoſe Signal is made to burn the Enemy), without receiving Orders from the Commanding Officer for that Purpoſe, by Signal, or otherwiſe?

And the Court were unanimouſly of Opinion, in the Negative: And therefore the Court were alſo unanimous in Opinion, That, as Captain *Burriſh* had no Order to cover the Fireſhip, by Signal, or otherwiſe, he is not chargeable with the Miſcarriage of the Fireſhip; eſpecially as he ſent his Boat to her Aſſiſtance.

The Preſident then communicated to the Court, a Letter, dated the Sixth Inſtant; which he had received from *Thomas Corbett*, Eſq; Secretary of the Admiralty; a Copy of which follows; *viz.*

SIR,

"AS my Lords Commiſſioners of the Admiralty are thoroughly convinced of the Integrity and upright Intentions of the Gentlemen who compoſe the preſent Court-Martial at *Chatham*; it is with Concern they have heard, That great Offence has been taken by the Publick, at the Refuſal given to Meſſieurs *Sharpe* and *Creſpigny* to aſk Queſtions of the Witneſſes, in the Courſe of the preſent Examinations. Their Lordſhips have inquired into that Fact, and find the Method taken, is, to allow the the Proſecutors to write down their Queſtions, which are afterwards read to the Court by the Preſident. As that Method, though deſigned to anſwer the ſame Purpoſe, ſeems attended with great Inconvenience and Delay, and certainly will not give ſo much Satisfaction to the Nation, as if the Proſecutors were ſuffered to examine *viva voce*; I am commanded by their Lordſhips to ſtate, for the Conſideration of the Court, Whether it may not be adviſeable to change the preſent Method."

"You are to conſider, That theſe Gentlemen attend, in purſuance of an Addreſs of the Houſe of Commons, and an Order from his Majeſty, directing them to proſecute in his Name: And, though no Occaſion has hitherto exiſted, in which it has been thought neceſſary to appoint a Proſecutor in this ſolemn Manner; yet, in every Court-Martial, where one Officer complains of another, the Complainant is conſidered in the Light of a Proſecutor, and, as ſuch, is permitted to aſk Queſtions *viva voce*, by the Mouth of the Preſident."

"The Officer complaining is really a Proſecutor on the Behalf of the King; in his Name the Suit is inſtituted; and, between the King and the Priſoner, the Court is ſworn to give Judgment."

"If therefore this is the uſual Form obſerved in all common Courts-Martial; Will it not be thought extraordinary to refuſe thoſe, that appear

" pear on the Behalf of the Crown, on this im-
" portant Occaſion, the ſame Privilege as is
" granted to all other Proſecutors, and to intro-
" duce a Method liable to many Objections and
" Inconveniencies, and which has never been
" practiſed before?"

" I am, *&c.*"

" *Tho. Corbett.*"

The Court took the ſame into Conſideration, and agreed unanimouſly in Opinion,

That, as the Appointment of Proſecutors, in the Manner that has been done on Occaſion of the preſent Tryals, is intirely new and unprecedented; the Court have ſhewn all poſſible Reſpect to the Addreſs of the Houſe of Commons, and the King's Order, in admitting the Proſecutors to ſit at a Side-Table in the Court, to hear all the Examinations, and in allowing them to deliver, in Writing, to the Judge-Advocate, to be laid before the Court, ſuch Queſtions as they may think neceſſary: That, as this Method enables the Proſecutors to have ſuch further Queſtions aſked, as they may judge to have been omitted, the Court are alſo unanimouſly of Opinion, That it is fully ſufficient to anſwer the Purpoſe of coming at the Truth; that it takes up leſs Time, than if they were to be permitted to interrogate *viva voce*; and that it does not, at the ſame time, lay the Court open to any Innovations of Law-Forms: And therefore they cannot agree to alter the preſent Method, as, they think, the Doing ſo, might be introductive of many real Inconveniencies, and infringe upon the Liberties of Courts-Martial.

And the Judge-Advocate was told by the Court, to deliver an atteſted Copy of this Reſolution to the Preſident, in order to his tranſmitting the ſame to Mr. *Corbett*.

Then the Court adjourned till To-morrow Morning, at Eight of the Clock.

Wedneſday the 9th of *October*, 1745.

THE Court met according to Adjournment; the ſame Members being preſent, as were Yeſterday.

The Court being cleared; the Minutes of the Two laſt Days were read.

The Court then proceeded to conſider, Under what Article or Articles of War Captain *Burriſh* fell: And the Court unanimouſly agreed, That he fell under Part of the Twelfth, and Part of the Fourteenth Articles.

Several Queſtions were then put, in relation to the Puniſhment to be inflicted upon Captain *Burriſh*, as follow; *viz.*

" Is the Court of Opinion, That Death
" ſhould be inflicted upon Captain *Burriſh?*

The Court unanimouſly agreed in the Negative.

" Is the Court of Opinion, That Captain *Bur-*
" *riſh* ſhould be impriſoned for any time?"

The Court were of Opinion (Sixteen to Four), That he ſhould not be impriſoned.

" Is it the Opinion of the Court, That Cap-
" tain *Burriſh* ſhall be caſhiered, and for
" ever rendered incapable, of being an
" Officer in his Majeſty's Navy?".

A Debate aroſe, Whether the Word " caſhiered," ſhould ſtand in the Queſtion, or whether it ſhould be the Word " broke:" And it was agreed (Fourteen to Six), That the Word " caſhiered" ſhould remain.

Then the Queſtion being put, the Court unanimouſly agreed, That Captain *Burriſh* ſhould be caſhiered, and for ever rendered incapable of being an Officer in his Majeſty's Navy.

The Judge-Advocate then drew up the Sentence: Which, being approved, was ſigned by the Court.

Captain *Callis* acquainting the Court, That Captain *Williams*, whoſe Tryal comes on next, is his near Relation, and therefore deſiring to be excuſed from attending the Court during his Tryal; and the Court, thinking his Requeſt very proper, agreed to diſpenſe with his Abſence accordingly.

Then the Marſhal was directed to bring in the Priſoner: And he was accordingly brought in, and every body admitted.

And then the Judge-Advocate, by Direction of the Preſident, read the Sentence, as follows; *viz.*

At a Court-Martial, aſſembled on board his Majeſty's Ship the *London*, at *Chatham*, on the 23d of *September*, 1745, and continued to be held, by Adjournment, on the 25th, 26th, 27th, and 30th of the ſame Month, and alſo on the 1ſt, 2d, 3d, 7th, 8th, and 9th of *October*, 1745;

PRESENT

Sir *Chaloner Ogle*, Admiral of the Blue, and Commander in Chief of his Majeſty's Ships in the Rivers of *Thames* and *Medway*, and at the *Buoy of the Nore*, } Preſident;

Perry Mayne, Eſq; Rear-Admiral of the *Blue*,
Capt. *William Parry*,
James Rentone,
Thomas Frankland,
Charles Colby,
Joſeph Hamar,
Francis Geary,
Robert Erſkine,
Edward Spragge,
John Orme;

Thomas Smith, Eſq;
Capt. *William Chambers*,
Robert Allen,
Sir *William Hewett*,
Sheldrake Laton,
Sir *Charles Molloy*,
Smith Callis,
John Pittman,
Hon. *Arch. Stuart*,

All duly ſworn, according to Act of Parliament;

THE Court (in purſuance of an Order from the Right Honourable the Lords of the

Admiralty to Sir *Chaloner Ogle*, dated the Eleventh of *September*, 1745.) proceeded to inquire into the Conduct of Captain *George Burriſh*, who commanded his Majeſty's Ship the *Dorſetſhire*, at the time of the late Engagement between his Majeſty's Fleet, and the Combined Fleets of *France* and *Spain*, off *Toulon*; and he was tried for the ſame, upon a Charge prepared againſt him by the Proſecutors in Behalf of the Crown, and laid before the Court by the Judge-Advocate: And the Court haveing ſtrictly examined all the Witneſſes produced, as well in Support of the Charge, as in the Behalf of the Party accuſed, and having thoroughly conſidered their Evidence, it appeared to the Court thereby;

That when the *Dorſetſhire* firſt brought to, to engage, ſhe was not in a Line with the Admiral; but, after the Admiral hauled off, ſhe was in a Line with, or as far to Leeward as the Admiral.

That the *Dorſetſhire*, after the *Marlborough*'s Maſts were gone, lay by inactive, for about Half an Hour, with the *Marlborough* between her and the *Real*; and that ſhe had not received ſuch Damage as to make her ſo lying by neceſſary.

That when Captain *Burriſh* received a Meſſage from the Admiral (while the *Dorſetſhire* was ſo lying by) to bear down to aſſiſt the *Marlborough*, and engage the *Real*, he did thereupon bear away, and hauled up again only for a few Minutes, till a Miſtake of the Firſt Lieutenant's, about a Want of Powder, was cleared up; and then he immediately bore away again, and aſſiſted the *Marlborough*, by engageing the *Real* for about a Quarter of an Hour, till ſhe bore away.

That as Captain *Burriſh* had no Orders to cover the Fireſhip, either by Signal or otherwiſe, he is not chargeable with her Miſcarriage, eſpecially as he ſent a Boat to her Aſſiſtance.

That as a Bar-ſhot did come on board the *Dorſetſhire*, in the Firſt Part of the Engagement; and it does not appear, that Captain *Burriſh* ever hauled off from the Enemy, after he began to engage; the *Dorſetſhire* muſt have been within extreme Point-blank, during the greateſt Part of the Engagement.

That Captain *Burriſh* (by his not Bearing down into a Line with the Admiral, when he firſt brought to, to engage; and by his lying inactive for about Half an Hour, upon the *Marlborough*'s loſing her Maſts) is guilty of Part of the Charge againſt him, as he did not do his utmoſt to bear down upon, fight, or engage with the Enemy in his Station; and, by his not doing ſo, did not give proper Aſſiſtance to the *Marlborough*, till after he bore down, in Conſequence of a Meſſage from the Admiral: For which Failures in his Duty, the Court agree, That he falls under Part of the Twelfth and Fourteenth Articles of an Act of the 13th of King *Charles* the Second, for eſtabliſhing Articles and Orders for the Regulating and better Government of his Majeſty's Navies, Ships of War, and Forces by Sea: And the Court do unanimouſly adjudge him the ſaid Captain *George Burriſh* to be caſhiered, and for ever rendered incapable of being an Officer in his Majeſty's Navy: And he is hereby caſhiered, and for ever rendered incapable of being an Officer in his Majeſty's Navy, accordingly.

Sheldrake Laton,	*C. Ogle*,
Joſ. Hamar,	*P. Mayne*,
C. Molloy,	*Thomas Smith*,
Fran. Geary,	*Wm. Parry*,
Smith Callis,	*Will. Chambers*,
R. Erskine,	*Ja. Rentone*,
J. Pittman,	*Rob. Allen*,
E. Spragge,	*Tho. Frankland*,
Arch. Stuart,	*Will. Hewett*,
John Orme.	*Cha. Colby*,

Cha. Fearne, Ju. Ad.

Then the Marſhal was ordered to diſmiſs the Priſoner out of his Cuſtody.

The Court adjourned till To-morrow Morning, at Eight o'Clock.

COPY

OF THE

MINUTES

AND

PROCEEDINGS,

Taken AT and UPON the

TRYAL

OF

Captain *EDMUND WILLIAMS.*

The FIRST DAY
UPON
Captain *EDMUND WILLIAMS*'s
TRYAL,
On Board His Majeſty's Ship the *London*, at *Chatham*.

THURSDAY, 10th *October*, 1745.

THE Court met, according to Adjournment, conſiſting of the following Members; *viz.*

Sir *Chaloner Ogle*, Preſident.

Perry Mayne, Eſq; Rear Admiral of the Blue.	Captain *John Orme*.
Captain *William Parry*.	*Thomas Smith*, Eſq;
James Rentone.	*William Chambers*.
Thomas Limeburner.	*Robert Allen*.
Sir *William Hewett*.	*Thomas Frankland*.
Sheldrake Laton.	*Charles Colby*.
Sir *Charles Molloy*.	*Joſeph Hamar*.
Robert Erſkine.	*Francis Geary*.
Edward Spragge.	*John Pittman*.
	Hon. *Archibald Stuart*.

Captain *Edmund Williams* was brought in to Court, by the Marſhal.

The Members of the Court were ſworn.

Then the Charge againſt Captain *Edmund Williams* was read.

Charge againſt Captain Edmund Williams.

FIRST, That on the Eleventh Day of *February*, in the Year of our Lord One thouſand Seven hundred and Forty-three, *Thomas Mathews*, Eſq; was Admiral and Commander in Chief of his Majeſty's Fleet in the *Mediterranean* Sea; and *Edmund Williams*, Eſq; being then and there Captain and Commander of his Majeſty's Ship *Royal Oak*, and under the Command, and in the Diviſion of the ſaid Admiral; and the ſaid *Thomas Mathews* being in Sight and View of the Combined Fleets of the King of *Spain*, his Majeſty's then declared Enemy, and the *French* King, his Ally and Confederate; and the ſaid Combined Fleets being very near, and in Likelihood of an Engagement with his Majeſty's ſaid Fleet; the ſaid *Thomas Mathews* did cauſe the proper Signal to be made to engage; and did then and there, with ſeveral of his Majeſty's Ships under his Command, bear down upon, engage, and join Battle with his Majeſty's ſaid Enemies, and endeavour to take, fire, kill, and endamage the ſaid Enemy; and the ſaid *Edmund Williams* then having the Command of his Majeſty's ſaid Ship *Royal Oak*, was in full Sight and View of the Signal to engage as aforeſaid, and in View of the ſaid Engagement; and well knew the Duty required by the ſaid Signal; and that by the Articles of War, his Majeſty's Inſtructions, and the Diſcipline of the Navy, it was his Duty to have done his utmoſt to take, fire, kill, and endamage his Majeſty's ſaid Enemies, as he might and ought to have done; but, inſtead thereof, withdrew or kept back from the Fight, and kept and continued with his Majeſty's ſaid Ship under his Command, to Windward of his Station in the Line of Battle, during all or the greateſt Part of the ſaid Engagement, notwithſtanding it was in his Power to have gone into his Station, and engaged with the ſaid Ship under his Command in Fight with his Majeſty's ſaid Enemies in his Station in the Line of Battle, as near as the ſaid *Thomas Mathews* did, had he uſed the proper Methods for that Purpoſe, and it was his Duty ſo to have done: Yet he kept and continued with the ſaid Ship out of his Station, and above the Diſtance of point-blank Shot from his Majeſty's ſaid Enemies, during all or the greateſt Part of the ſaid Engagement; in Breach of the Articles of War, his Majeſty's Inſtructions, and the Commands of the Admiral, as aforeſaid.

Second, That by the Twentieth Article of his Majeſty's Fighting-Inſtructions to his Commanders, it is expreſsly charged and commanded to the Effect following; *viz.* "Every Commander "is to take Care, that his Guns are not fired "till he is ſure he can reach the Enemy upon "a Point-blank"; yet notwithſtanding he the ſaid *Edmund Williams* did, on the ſaid Eleventh Day of *February*, fire, and cauſe to be fired at the Enemy ſeveral Guns, when the ſame were not in Reach of the Enemy upon a Point-blank, nor even in Reach of the Enemy on random Shot; in Breach of his Duty, and Violation of the Obedience due to his Majeſty, and his Inſtructions.

Third, That during the Engagement aforeſaid, between Part of his Majeſty's Fleet and the ſaid Combined Fleets, his Majeſty's Ships *Namur* and *Marlborough* were hard preſſed, and the latter was diſabled, having her Main and Mizen Maſts ſhot away; and after ſhe was ſo diſabled, as aforeſaid, continued for a conſiderable time engaged in Fight with his Majeſty's Enemies; which he the ſaid *Edmund Williams* ſaw; he the ſaid *Edmund Williams* then being in Command as aforeſaid, and being aſtern and

to Windward of the *Marlborough*, and capable of yielding Aſſiſtance and Relief to his Majeſty's ſaid Ships *Namur* and *Marlborough*, by going with his Majeſty's Ship *Royal Oak*, then under his Command, to their Aſſiſtance; which he might and ought to have done: Notwithſtanding which, he the ſaid *Edmund Williams* did not do his utmoſt to aſſiſt and relieve his Majeſty's ſaid Ships; but withdrew, and kept back with his Majeſty's ſaid Ship under his Command, from the ſaid Fight or Engagement, and from the Aſſiſtance of his Majeſty's ſaid Ships *Namur* and *Marlborough*; contrary to his Duty, and the Articles of War.

Fourth, That the ſaid *Edmund Williams* was, and is guilty of Diſobedience to his Majeſty's Inſtructions, and the Signals and Commands of the Admiral, and Neglect of naval military Diſcipline, and of divers notorious Breaches of his Duty, as a Captain and Commander of one of his Majeſty's Ships of War, upon the ſaid Eleventh Day of *February*, before and during the ſaid Engagement of his Majeſty's ſaid Fleet, with the Combined Fleets of *France* and *Spain*, in the *Mediterranean* Sea, as aforeſaid; and was one of the principal Cauſes of the Miſcarriage of his Majeſty's ſaid Fleet.

This Charge was, on the 19th of *Auguſt*, 1745, ſettled and approved of by Mr. *Legge*.

John Sharpe.
P. Creſpigny.

Priſoner. This is a very heavy and ſevere Charge; but I hope to make it appear, that all that is laid to my Charge is not true, if any Part of it is. I ſhall not take up your Time, but ſubmit to the Juſtice of the Court.

Court. You may depend upon having all the Juſtice in the World done you.

Priſoner. I don't at all doubt it.

The Court then told the Priſoner, That as his Eye-ſight was bad, and it might be an Obſtruction to his taking ſuch Minutes as he might judge neceſſary, he might have a Table, with ſomebody by him, to take down Minutes: And he had a Table, and a Perſon for that Purpoſe, accordingly.

Then the Witneſſes, in Support of the Charge, were ordered to be called in.

Captain *Nucella*, late Lieutenant of the *Marlborough*, called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 27.): And he declared the ſame to be true.

Q. Where was the *Royal Oak*, when the *Namur* firſt began to engage? Was ſhe in a Line with the Admiral?

A. I did not ſee the *Royal Oak* for a great while after the Beginning of the Engagement.

Q. Where was ſhe, when you ſaw her firſt?

A. She was upon our Weather-Quarter.

Q. Where was you quartered?

A. Upon the Lower Deck.

Q. Was the *Royal Oak* to Windward or to Leeward of the other Ships aſtern?

A. She was a little more to Leeward than the other Three Ships aſtern of the *Marlborough*.

Q. Did you ever ſee her engaged with the Enemy?

A. Yes, I ſaw ſome Guns fired from her.

Q. Do you think ſhe was ever within Point-blank.

A. I think not; ſhe was not ſo near as a Ship ought to be, to engage.

Q. At what time had the *Royal Oak* a Ship oppoſed to her, to engage?

A. About two Hours after the Action began: I did not ſee her begin ſooner.

Q. What Ship could ſhe have then engaged with?

A. I believe the Second or Third Ship from the *Spaniſh* Admiral.

Q. How many Ships were there aſtern of the *Spaniſh* Admiral?

A. I think there were Six Ships aſtern of him.

Q. What Number of them were cloſed in a Line with the *Spaniſh* Admiral?

A. Only One.

Q. When you ſaw the *Royal Oak* fire, What Ship was it ſhe fired at?

A. I believe the Second or Third from the *Spaniſh* Admiral, I can't tell which.

Q. How long was that after the Engagement began?

A. About Two Hours.

Q. Where was you then?

A. I was upon the Poop.

Q. Do you apprehend, when you ſaw the *Royal Oak* firſt fire, that ſhe was in a Line with the Admiral? Was ſhe to Windward or to Leeward?

A. She was to Windward of us, and ſhe might be in a Line with the Admiral, for aught I know; for the Admiral was then upon our Weather-Bow, and the *Royal Oak* upon our Weather-Quarter.

Q. Was the *Royal Oak*, when ſhe firſt brought up, in a Line with the Admiral?

A. I can't tell; for I did not ſee her for near Two Hours after the Engagement began.

Q. Was ſhe ever in a Line with you?

A. No.

Q. Was you in a Line with the Admiral, when you firſt began to engage?

A. When we firſt brought to, the Admiral was as near in a Line as could be, or rather upon our Weather-Bow.

Q. When you ſaw the *Royal Oak*, was it in her Power to have engaged any Ship of the Enemy cloſely, without breaking the Line?

A. Yes, ſhe might have gone more to Leeward, without breaking the Line.

Q. Could

Q. Could the *Royal Oak* have engaged any Ship of the Enemy closely, without going to Leeward of the *Marlborough?*

A. At first there was no Ship for her to engage; but afterwards, if she had bore down equally with the *Namur* and *Marlborough*, she would have been in a proper Station to have engaged the *Spanish* Ships closely, as they came up.

Q. When you first saw her, was it in her Power to have engaged any Ship, as closely as you did the *Real?*

A. Really I can't positively say.

Q. Could she have engaged in a Line with you?

A. Yes, I believe so.

Q. Do you think your Line and the Admiral's was the same?

A. Yes, as exactly as could be.

Q. Do you think it was in the Power of the *Royal Oak* to have given the *Marlborough* any Assistance?

A. I think it was in her Power, if she had crowded ahead; but I don't know whether it was her Duty to do it, without Orders.

Court. You are not ask'd that; you are to answer such Questions as you shall be ask'd.

Q. How far was the *Royal Oak* from you, when you first lost your Masts?

A. I believe about a Mile and an half; but I can't determine Distances.

Q. Did you observe what Sail she had then?

A. I don't remember.

Q. Could she have given you any Assistance?

A. I really did not expect any Assistance from her.

Q. Did you observe any Shot from the *Royal Oak* fall short?

A. No, I did not.

Q. How do you know the *Royal Oak* was not within Point-blank, since you did not see any Shot fall short?

A. I believe she was not, by the Distance between her and the Enemy; she did not seem to be near enough to engage.

Q. Could the *Royal Oak* have assisted the *Marlborough*, by engaging the *Hercules?*

A. Yes: If she had made sail, and shot ahead of the other Three Ships between her and the *Marlborough*, she might have come to our Assistance, and have engaged the *Hercules:* It was possible; she might have done it, if she would.

Q. What Distance was the *Royal Oak* from you?

A. About a Mile and an half.

Q. What Wind was there at that time? Was there enough for a Ship to answer her Helm?

A. Yes, I believe there was.

Q. Did the *Royal Oak* never edge down nearer the Enemy, after you first saw her?

A. No, I did not see that she did, till after the Admiral wore.

Q. Did she appear to be the Leewardmost Ship astern of you?

A. Yes, I really thought she was the Leewardmost of the Three; she was about a Mile and an half from us, and about two Points upon our Quarter: But if all the Ships astern had been in a Line, the Sternmost would have appeared to me to be the Leewardmost; though, I really believe, she was the Leewardmost.

Q. How did the *Royal Oak* bear from you?

A. Upon our Weather-Quarter.

Q. How did you bear from the *Namur?*

A. The *Namur* was a little upon our Bow, when she hauled up.

Q. How much upon your Bow?

A. About a Point.

Q. At what Distance from you?

A. About a Quarter of a Mile; and the *Royal Oak* might then have been in a Line with the *Namur*.

Q. Was the *Royal Oak* never nearer to the *Marlborough*, than a Mile and an half?

A. Never, I believe, till they wore; but I can't be exact as to the Distance.

Q. You think so, to the best of your Judgment?

A. I believe she was not.

Q. Did you ever see the *Royal Oak* closely engaged?

A. I did not see her closely engaged, till after Wearing.

Q. How long did you see the *Royal Oak*, in the Whole of the Engagement?

A. I might have seen her about two Hours and an half, from the Time of my seeing her when I first came upon Deck, just after we lost our Masts; but I did not see her all that time.

Q. Did you not see the *Royal Oak*, before you lost your Masts?

A. I did see her once before we lost our Masts, out of one of the Stern-Ports; but I did not observe what she was then about.

Q. Could the *Royal Oak* have fired at any of the Enemy's Ships?

A. I believe she might.

Q. What Ship could she have fired at?

A. I can't certainly tell what Ship she fired at; but, I believe, it was the Second Ship astern of the *Spanish* Admiral.

Q. How near was the *Royal Oak* to that Second Ship, when she did engage her?

A. I believe about half a Mile, or something less.

Asked by the Prisoner,

Q. Did not the *Royal Oak* go to Leeward of the *Marlborough* before Wearing, in shooting ahead up to the Admiral?

A. I don't remember that she did; but I can't say she did not.

Q. Don't you remember the *Marlborough* to have given the *Royal Oak* Three Cheers?

A. Yes, now Captain *Williams* mentions it, I do remember that Circumstance; and the *Royal Oak* was then upon our Lee-Quarter.

Q. At what time was that?

A. It

A. It was after our Maſts were gone; and, I think, it was before they wore, or juſt about the Time of Wearing.

Court aſked,

Q. Had the *Real* bore away then?

A. Yes, I believe it was after the *Real* bore away.

Q. Are you poſitive of that?

A. I think ſhe was bore away then.

Court. You ſhould always give poſitive Evidence; you are upon your Oath.

Witneſs. I do, as much as I can.

Then he withdrew.

Priſoner. There is a Gentleman juſt come to Town, who was Lieutenant of the *Marlborough* then, and can give you ſome Account of the *Royal Oak*.

Then the Judge-Advocate acquainted the Court, That Lieutenant *Hale*, of the *Marlborough*, was juſt come home, if they pleaſed to have him called in.

Lieutenant *Hale*, of the *Marlborough*, called in, and ſworn.

Q. Where was you quartered?

A. Upon the Middle-Gun-Deck.

Q. Acquaint the Court, what you know, in relation to the Conduct of Captain *Williams*, from the Beginning of the Engagement to the End of it?

A. I know very little of the Beginning of the Engagement; for as ſoon as Mr. *Mathews* and we bore down to engage, I went down to my Quarters; and when our Maſts were gone, I went upon Deck; and then I ſaw the *Royal Oak* to Leeward of the reſt of the Ships aſtern of the *Marlborough*, in the Rear of our Diviſion.

Q. What do you know more?

A. I know nothing more.

Q. How did ſhe bear from you then?

A. Upon our Weather-Quarter.

Q. At what Diſtance?

A. About half a Mile diſtant, and to Windward.

Q. Was ſhe half a Mile to Windward?

A. No, not half a Mile to Windward; ſhe was half a Mile diſtant from us.

Q. How near was ſhe to any of the Enemies Ships?

A. I believe ſhe was within Point-blank of the *Spaniſh* Ships that were coming up.

Q. Did ſhe fire at any; and which of thoſe Ships?

A. Yes, upon the Headmoſt.

Q. What, within point-blank Shot?

A. I think it was within point-blank Shot.

Q. How long was ſhe engaged?

A. I can't tell; for ſhe was engaged before I came upon Deck.

Q. How long did ſhe engage, after you came upon Deck?

A. I believe about Three Quarters of an Hour, after I firſt ſaw her engaged.

Q. What made her leave off engaging?

A. I can't tell.

Q. Did you ſee any thing more relating to the *Royal Oak?*

A. No; for I was then ſent to the Admiral, to know what he would have done with our Ship; and I did not obſerve her afterwards.

Q. When you firſt obſerved the *Royal Oak*, how many Ships were between you and her?

A. There were Three, and ſome of them farther to Windward; the *Eſſex* was greatly to Windward of the *Royal Oak*; the *Royal Oak* was the Leewardmoſt of all.

Q. Then there was hardly Room for the other Ships, if ſhe was within half a Mile of you?

A. The others were farther to Windward.

Q. Where was the *Dorſetſhire* then?

A. She was upon our Beam.

Q. After you came up from your Quarters, when your Maſts were gone, was the *Royal Oak* then as far to Leeward as the Admiral was when he firſt began to engage?

A. Upon my Word I think ſo; though not ſo far to Leeward as the *Marlborough*; becauſe, after her Maſts were gone, ſhe fell to Leeward.

Q. Did you ever ſee any other Signals thrown out by the Admiral, beſides the Signal for the Line, and the Signal for Battle, after your Maſts were gone?

A. In the Evening, as I was going to look out for Frigates to come and take care of our Ship, I ſaw the Admiral haul down the Signal for Battle, and hoiſt the white Flag at the Fore-Topmaſt-Head, and fire a Gun.

Q. At what time was that?

A. About Five o'Clock; about Sun-ſet, after he wore.

Q. Do you remember to have ſeen the *Royal Oak* ever to Leeward of the *Marlborough*, during the Engagement?

A. I can't ſay I did.

Q. Do you remember her being cheered from your Ship?

A. No, I don't remember it; I was not then on Board.

Q. When you firſt ſaw her, What Poſition were the Enemies Ships in, with regard to her?

A. Some were aſtern of the *Royal Oak*, upon her Quarter; One or Two were within Gun-ſhot abreaſt of her: There was One or Two abreaſt of her, and Two or Three aſtern.

Q. How near was the *Royal Oak* to the Enemy, when ſhe was engaged with the Headmoſt of thoſe Ships?

A. I believe within Point-blank; for I ſaw the Enemies Shot go over the *Royal Oak*.

Q. At what Time of the Day was that?

A. I believe it was betweeen Three and Four o'Clock: I can't be poſitive to the Time of the Day.

Q. When you ſaw the Enemy in that Poſition, Could the *Royal Oak* have gone nearer to them, and more to Leeward, without breaking the Line?

A. I believe ſhe could not have gone more to Leeward, without breaking the Line; for ſhe muſt have been to Leeward of the Admiral.

Q. How was the Admiral with reſpect to your Ship then?

A. Upon our Weather-Bow.

Q. How much upon your Weather-Bow?

A. About Two Points.

Q. At what Diſtance from you?

A. About half a Mile.

Q. You ſay, The *Royal Oak* engaged a *Spaniſh* Man of War within point-blank Shot?

A. Yes.

Q. Did ſhe continue engaged with her, till the Admiral wore?

A. I can't tell; for I was gone from our Ship before the Admiral wore, and then I left her engaging.

Q. How long did you ſee her engage?

A. About Three Quarters of an Hour: How long ſhe engaged afterwards, I can't tell.

Q. Do you think ſhe was near enough to do proper Execution?

A. She was within Point-blank: I ſaw the Enemies Shot go over her.

Q. What Diſtance was the *Royal Oak* from the Ship ſhe engaged?

A. About Three Quarters of a Mile.

Q. How many Cables Length was the *Royal Oak* from the *Spaniſh* Ship that ſhe engaged?

A. I can't tell juſtly how many Cables Length.

Q. How many do you think ſhe was?

A. I can't ſay how many: I believe ſhe was about Three Quarters of a Mile diſtant.

Q. What is your Reaſon for thinking ſhe was within Point-blank?

A. Becauſe I ſaw Shot go over her?

Q. That is your Reaſon: Is it?

A. Yes.

Q. Did you ſee any Shot fall ſhort of her?

A. No; I did not.

Q. Was you then engaged?

A. No; the *Real* was then upon our Bow, and we could not bring any Guns to bear upon her.

Q. Where was the *Namur* then?

A. To Windward of us.

Q. What was the *Hercules* then doing, when the *Real* was ahead of you, ſo that you could not engage her?

A. She was firing at us, and we fired at her again; but we were not then engaged with the *Real*, becauſe our Head had fallen off, and we could not bring any Guns to bear upon her.

Q. Do you think you received any Hurt from the *Hercules?*

A. Yes, I believe moſt of the Damage we received was from the *Hercules.*

Then he withdrew.

John Baptiſta, Pilot of the *Marlborough*, was called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 30.): And he declared the ſame to be true.

Q. Was you upon Deck moſt Part of the Time during the Engagement?

A. I was upon Deck almoſt all the Time.

Q. Did you ever ſee the *Royal Oak* engage the *Spaniards?*

A. About Three o' Clock, after we loſt our Maſts; but before we had done engaging, we ſaw a Ship more to Leeward than any of the other Ships; and I was told, it was the *Royal Oak*, and ſhe was firing at the Second or Third of the Five *Spaniſh* Ships coming up; and at the latter Part, after the Fireſhip was blown up, I believe the *Royal Oak* came juſt to Leeward of us, and hailed us, or cheered us.

Q. Was the *Royal Oak* within Point-blank, when ſhe ſo engaged?

A. Yes, I think ſhe was; I cannot be poſitive ſhe was; but ſhe was pretty near.

Q. How near was ſhe to the neareſt of the Enemy?

A. I believe about half a Mile, or Three Quarters of a Mile.

Q. Was the *Royal Oak* engaged before you loſt your Maſts?

A. After we loſt our Maſts, I ſaw the *Royal Oak* fire.

Q. If the *Royal Oak* had bore down, and gone cloſer to the Four *Spaniſh* Ships that were coming down, Would ſhe not have been to Leeward of the Line?

A. Yes, if ſhe had engaged thoſe Four Ships cloſely, ſhe muſt have been to Leeward of the Line, becauſe thoſe Four Ships were to Leeward of the *Real.*

Q. Was ſhe near enough to do Execution upon the Enemy?

A. Yes, at the latter End, when we had done Engaging.

Q. How do you know that it was the *Royal Oak?*

A. Becauſe they ſaid it was the *Royal Oak.*

Q. Could the *Royal Oak* have bore down ſooner than ſhe did?

A. Yes, ſhe could; all the Ships aſtern of us might; for they had Wind enough.

Q. What Ship could ſhe have engaged, if ſhe had bore down ſooner?

A. The *Hercules*, or the headmoſt of the Four *Spaniſh* Ships.

Q. What Diſtance was the headmoſt of the *Spaniſh* Ships then from her?

A. I can't ſay: If they had a mind to have bore away, they might have done it, and have attacked them, or the Ship aſtern of the *Spaniſh* Admiral, that plagued us.

Q. At what Diſtance was the headmoſt of thoſe *Spaniſh* Ships from you, at the Beginning of the Engagement?

A. At a great Diſtance; Two or Three Miles aſtern, and to Leeward, upon our Lee-Quarter.

Q. What Diſtance was the *Royal Oak* from you then?

A. About the ſame Diſtance.

Q. You are aſked, What Diſtance the *Royal Oak* was from the *Marlborough*, at the Beginning of the Engagement?

A. About Two Miles, or Two Miles and an Half; I can't juſtly tell.

Q. What Diſtance was the *Royal Oak* from the *Marlborough*, when the *Royal Oak* was engaged with thoſe *Spaniſh* Ships?

A. I can't tell: If I ſaid I knew, I ſhould tell you a Story.

Q. Do you know? or do you not know?

A. I do not know.

Q. What Ship was neareſt to you, juſt at the time you loſt your Maſts?

A. The Two middle Ships were.—I can't tell.

Q. What Ship was neareſt to you, a Two-deck Ship, or a Three-deck Ship?

A. The little Ship, I believe: I believe the *Royal Oak* was neareſt.

Q. Did you, about the Time you loſt your Maſts, look at the Admiral? And how did he bear from your Ship?

A. Before we loſt our Maſts, he was upon our Weather-Bow.

Q. Did you obſerve any other Signal than that for Battle, after you loſt your Maſts?

A. No.

Q. Could the *Royal Oak* have bore down, and given you any Aſſiſtance?

A. Yes; any of the Four Ships aſtern of the *Marlborough* could; for there was Wind enough.

Q. Was the *Royal Oak* in her Station?

A. She was the Sternmoſt and Leewardmoſt of the Four Ships: I can't juſtly tell, whether ſhe was in her Station.

Q. Was the *Royal Oak* in the Line?

A. Yes, at the Beginning.

Q. You ſeem to think, that all the Four Ships aſtern could have bore down to your Relief?

A. Yes, I believe they could.

Q. Could not the *Spaniſh* Ships have weathered them then?

A. I do not believe the *Spaniſh* Ships could have weathered them.

Q. How long had you been engaged before you ſaw the *Royal Oak* fire?

A. I did not ſee her till after we had done Engaging; but I can't ſay whether ſhe fired before, or not; but juſt after we loſt our Maſts, I did not ſee any of the Ships aſtern engaged.

Q. How long did the *Royal Oak* engage?

A. I can't tell.

Q. Do you think the *Royal Oak* engaged within Point-blank, when you ſaw her engaged?

A. She engaged ſo near, that the Shot could very well reach one another; but I cannot be certain as to Point-blank.

Then he withdrew.

Lieutenant *Hyde*, of the *Marlborough*, called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 45.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. Was the *Royal Oak* ever within Point-blank of the Enemy?

A. I can't tell: I know all thoſe Four Ships were to Windward of us, when we engaged firſt.

Q. Do you know nothing of her Behaviour? Where was the *Royal Oak?*

A. When we began to engage, ſhe was to Windward; but I remember nothing of her afterwards; I know nothing farther.

Q. When you firſt began to engage, Was it in the *Royal Oak*'s Power to engage any Ship of the Enemy?

A. I can't tell.

Q. Did you look to ſee where the reſt of the Diviſion were then?

A. Yes.

Q. Where was the *Royal Oak?*

A. She was to Windward: That's all I know of the Matter.

Q. Did you obſerve nothing of the *Royal Oak*, after your Maſts were gone?

A. I did not mind her then in particular.

Q. What Ships were there aſtern of you?

A. There were Four; the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*.

Q. Could the *Royal Oak* have bore down equally with the *Namur* and *Marlborough?*

A. I know nothing of it.

Q. Do you think, if ſhe was to Windward, that ſhe might not have bore down?

A. Yes, to be ſure, ſhe might.

Q. Could the *Royal Oak* have come down, or not?

A. Yes, I believe ſhe might; there was Wind ſufficient, and ſhe was to Windward: Either of the Four might have bore down, being to Windward.

Q. Did you ever ſee the *Royal Oak* engaged with any of the *Spaniſh* Ships?

A. I can't ſay that I did; I was intent only with regard to the *Dorſetſhire*.

Q. Was the *Royal Oak* firing at the Enemy when you ſaw her?

A. Not that I remember.

Q. How far was the *Royal Oak* from you?

A. I don't know.

Court. It is a ſtrange Thing you ſhould give an Account of the *Royal Oak* in your Depoſition, and know nothing of her now you are examined.

Witneſs. I ſaw her when we firſt began to engage; and I never ſaw her afterwards.

Then he withdrew.

Humphry St. Hill, Maſter's Mate of the *Marlborough*, called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 32.): And he declared the ſame to be true.

Q. Where

Q. Where was you quartered?

A. At the Braces forward.

Q. Could the *Royal Oak* have bore down?

A. Yes, certainly; as ſhe had the Weather-gage, I think ſhe might have bore down as well as the *Marlborough*.

Q. If ſhe had bore down properly in your Wake, What Ship would there have been for her to have engaged?

A. The Second of the *Spaniſh* Ships coming up, if the *Rupert* had bore down equally; otherwiſe, the Firſt.

Q. If ſhe had bore down in time, could ſhe have been of Aſſiſtance to you againſt the *Hercules?*

A. Yes, to be ſure; any of the Four Ships might have been of Aſſiſtance, if they had come nigh enough.

Q. Did you receive any Damage from the *Hercules?*

A. Yes, I believe, a good deal.

Q. And you ſay, the *Marlborough* might have had Aſſiſtance from the *Royal Oak?*

A. Yes.

Q. Was the *Royal Oak* the Leewardmoſt or the Weathermoſt of our Four Sternmoſt Ships?

A. I can't ſay.

Q. Did you ſee the *Royal Oak* fire?

A. Yes, I believe at the headmoſt of the Four *Spaniſh* Ships.

Q. At what Diſtance?

A. Really I cannot ſay.

Q. What Time was it that you ſaw the *Royal Oak* engaged?

A. About Two o' Clock; after our Maſts were gone, I ſaw her engaged; but I ſaw nothing before, becauſe we were hotly engaged with the *Real*, and the *Hercules*.

Q. After your Maſts were gone, and you ſaw the *Royal Oak* engaged, Could ſhe have gone nearer to the Enemy without breaking the Line?

A. No; I believe, not without breaking the Line.

Q. Was ſhe in a Line with the *Marlborough*, or in the *Marlborough*'s Wake?

A. No.

Q. If the *Royal Oak* had bore down to Leeward, to have engaged thoſe Four *Spaniſh* Ships at a proper Diſtance, Would ſhe have been to Leeward of the *Marlborough*'s Wake?

A. If ſhe had bore down into the *Marlborough*'s Wake, I believe ſhe would have been at a proper Diſtance.—Admiral *Mathews* ſaid to Captain *Cornwall*, as we were going down, Do you bear down upon the *Real*, and I will follow you. We accordingly bore down; and after Engaging about a Quarter or Half an Hour, the Admiral hauled his Wind.

Q. What Diſtance was the *Royal Oak* from you, when ſhe firſt engaged?

A. I believe Two or Three Miles.

Q. How far was the headmoſt of the *Spaniſh* Ships from you, when the *Royal Oak* firſt began to engage?

A. About Two or Three Miles.

Q. Was the *Royal Oak* the Leewardmoſt of thoſe Four Ships aſtern of you?

A. I can't juſtly ſay.

Q. Did you ever obſerve, juſt after loſing your Maſts, any Signal from the Admiral for any particular Ship, beſides the Signal for the Line, and the Signal for Battle?

A. No, I did not.

Q. Do you think, when you ſaw the *Royal Oak* fire at the Enemy, that ſhe was within Point-blank?

A. I can't ſay.

Q. Did you ſee any Shot fly over her?

A. No, I did not; but I ſaw Smoke from her, which made me think ſhe was engaged.

Q. Did you obſerve how long ſhe was engaged?

A. I did not; I was very buſy after our Maſts were gone.

Q. When you ſaw her Smoke, Do you think the *Royal Oak* engaged the Enemy at a proper Diſtance?

A. I believe not; I believe ſhe was at too great a Diſtance to annoy the Enemy; I believe the Shot did not reach.

Q. Did the *Rupert*, or the *Royal Oak*, appear to be at the greateſt Diſtance from the Enemy?

A. I can't ſay which.

Q. I think the *Royal Oak* was to Leeward of you before the Action was over?

A. I cannot ſay.

Q. Did you never ſee the *Royal Oak* to Leeward of you?

A. No, never.

Q. Did the *Royal Oak* go to Leeward of you, after your Maſts were gone?

A. I can't juſtly ſay; becauſe I made no Remarks afterwards, being very buſy.

Q. Do you know any Thing of any Ship's cheering you?

A. No; I can't ſay any thing to that.

Q. At Night, when the Admiral wore, Was the *Royal Oak* upon your Lee-Quarter?

A. I cannot tell.

Q. Juſt at the loſing your Maſts, I ſuppoſe you naturally looked to ſee, if any Ship was coming to your Aſſiſtance?

A. Yes.

Q. Then which of our Four Ships was neareſt to you?

A. I think the *Dorſetſhire* was the neareſt of the Four.

Q. At what Time did you ſee the *Royal Oak* fire at the Enemy?

A. Between Two and Three o' Clock, juſt after our Maſts were gone: When our Maſts were gone, I obſerved Two of our Ships aſtern firing at the *Spaniſh* Ships coming up; which, I believe, were the *Royal Oak* and *Rupert*.

Q. When did you ſee the *Royal Oak* laſt?

A. Not after that Time.

Asked by the Priſoner,

Q. Did you ſee the *Dorſetſhire*, *Eſſex*, or *Rupert*,

Rupert, firing, when you ſay the *Royal Oak* might have bore down to the Aſſiſtance of the *Marlborough*?

A. I ſaw the *Dorſetſhire* firing at that time.

Priſoner. Therefore I could not have gone to the *Marlborough*'s Aſſiſtance, without going through the *Dorſetſhire*'s Fire, if I had had Orders to have broke the Line.

Then the Witneſs withdrew.

Richard Hamilton, Boatſwain of the *Namur*, was called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 35.)

Q. I think you ſay, in your Depoſition, that the *Royal Oak* was not in the Line, but kept to Windward.

A. I did not take any Notice of the *Royal Oak*; only, when ſhe joined the Fleet, and came along-ſide of us, about Ten o'Clock in the Morning. I never ſaw her afterwards.

Then Part of his Depoſition, where the *Royal Oak* was mentioned, was read again.

The Witneſs ſaid, He was ſurpriſed any thing was mentioned in it about the *Royal Oak*, becauſe he did not ſee or know any thing of the *Royal Oak*; but only took notice of the *Dorſetſhire* and *Eſſex*.

Q. You ſay you don't know any thing of the *Royal Oak*?

A. I always ſaid, to the beſt of my Remembrance, I did not ſee any thing of the *Royal Oak*.

The Witneſs was then aſked, If he had read and ſigned the Affidavit?

He replied, That he had both read and ſigned; but did not know, that there was any thing of That in it, or that he ſaid any thing of the *Royal Oak*.

Q. Do you know any thing of the *Royal Oak*?

A. To the beſt of my Knowlege, I never ſaw her after ſhe came along-ſide of the *Namur*; which was about Ten o' Clock.

The Judge-Advocate acquainted the Court, That the Witneſs had peruſed the Draught of his Affidavit, and altered it to his own Mind; and when it was wrote over again, he read the fair Copy, and ſwore to it.

Then the Witneſs was ordered to withdraw.

Edward Miller, Gunner of the *Namur*, was called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 36.): And he declared the ſame to be true.

Q. I think you ſay the *Royal Oak* gave no Aſſiſtance to the *Marlborough*.

A. She was not in the Line, when I ſaw her; about Half an Hour after Two o'Clock, ſhe was to Windward of the Line; but about Four o'Clock I ſaw her engaged with the Enemy, and, I believe, within Gun-ſhot; but, as to Point-blank, I can't be certain.

Q. Why, don't you know whether ſhe was within Point-blank?

A. She was about Two Miles off; I obſerved both her and the *Rupert* engaged very warmly within Gun-ſhot; but I can't ſay, whether within Point-blank, being Two Miles diſtant.

Q. How was the *Royal Oak*, with reſpect to the *Namur*, when you ſaw her engaged?

A. I believe ſhe was in a Line with the *Namur*?

Q. Was the *Namur* hauled off then?

A. No; ſhe was then ſhot ahead, but not hauled off.

Q. What time did ſhe haul off?

A. She did not haul up for an Hour and an Half after ſhe ſhot ahead; when the *Namur* hauled up. It was after the Fireſhip bore down, paſt Four o'Clock; and ſhe did it, as I apprehend, to gain room to wear to Windward of the Enemy.

Q. Where was you quartered?

A. Upon the lower Gun-deck—I made very little Obſervations of the *Royal Oak*: I looked at her but twice; once for Two or Three Minutes, about Half paſt Two o'Clock, and once about Four. The firſt time I ſaw her, ſhe was conſiderably to Wndward; but when I ſaw her at Four o'Clock, ſhe was ſmartly engaged with one of the Four *Spaniſh* Ships that were coming up; but I can't ſay whether within Point-blank; and was then in a Line with the *Namur*.

Q. Was ſhe in a Line with the *Marlborough*?

A. I cannot ſay.

Q. Was the *Royal Oak* within Gun-ſhot of the Enemy, at Four o'Clock?

A. Yes.

Q. What Ship was the *Royal Oak* engaged with?

A. I cannot ſay; I can't ſay whether there were Two or Three Ships engaged with her and the *Rupert*; but there was a ſmart Fire; and I believe they were near enough to do Execution.

Q. When you firſt ſaw the *Royal Oak*, was there any Ship for her to engage?

A. No; the *Spaniſh* Ships were not then come up.

Q. I think you ſay, that the *Namur* did not break the Line, or haul up, till Four o'Clock in the Afternoon?

A. Yes—I will not ſpeak any thing but the Truth, to the beſt of my Knowlege.

Q. After you ſhot ahead, did you not fire your Stern-Chace upon the *Real*'s Bow?

A. Yes; we began about Half an Hour after Two; we were forced ahead by the *Marlborough*; and after we ſhot ahead, the *Real* was ſometimes about a Point and an Half upon our Lee-Quarter, and ſometimes right aſtern.

Q. Then you was rather to Leeward of the Enemy's Line?

A. Yes, we were ſo.

Q. How long did you engage the *Real*?

A. For an Hour and an Half, or Two Hours.

Q. At

Q. At what Diſtance?

A. Within Piſtol-ſhot; and her Two Larboard Bow-Ports were beat into one; and I believe, that was done by us.

Q. Was the *Royal Oak* then in a Line with you?

A. After Four o'Clock, when we hauled off, I believe ſhe was; and ſhe was then ſmartly engaged with the Enemy.

Q. Was the *Royal Oak* cloſe enough to do Damage to the Enemy?

A. I believe ſhe was.

Q. Was ſhe within Point-blank?

A. I can't tell whether within Point-blank; but I apprehend ſhe might do a great deal of Damage to the Enemy, without being within point-blank Shot, which I don't take to be above a Quarter of a Mile.

Q. What do you mean by ſmartly engaging?

A. A quick Fire from both Sides.

Q. You ſay, You ſaw the *Royal Oak* for Two or Three Minutes about Two o'Clock; and ſhe was to Windward of the Line.

A. I don't ſay that.

Q. Was the *Royal Oak* in a Line before Four o'Clock?

A. No, ſhe was to Windward: About Four o'Clock I was looking out of the Stern-Port; and the *Royal Oak* ſeemed then to be in a Line.

Q. Could the *Royal Oak*, when you firſt ſaw her at Half paſt Two, have engaged any Ship of the Enemy?

A. The Enemy's Ships were not come up then: There was a great Gap between the *Spaniſh* Admiral, and the Four *Spaniſh* Ships aſtern.

Q. Had the *Royal Oak* ever it in her Power to have aſſiſted the *Marlborough* againſt the *Hercules*?

A. I can't ſay whether ſhe could, or not.

Q. Was ſhe to Windward, or to Leeward?

A. She was to Windward, about Two o'Clock.

Q. Then could ſhe not have ſuccoured the *Marlborough*?

A. She was a good deal aſtern — You are Judges whether ſhe could come up or no: There was Wind enough.

Aſked by the Priſoner,

Q. How was your Ship? Was ſhe under Way, when you ſaw the *Royal Oak* out of your Stern-Port, at Four o'Clock?

A. I think we were then under Way.

Q. Was I then in the Line?

A. I believe you was then right in our Wake.

Then he withdrew.

Lieutenant *Benjamin Jenkins*, late Midſhipman of the *Namur*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 38.): And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Braces.

Q. Do you know any thing of the *Royal Oak*'s Engaging?

A. No, I did not ſee her fire.

Q. How near was ſhe, when neareſt to the Enemy?

A. When I looked out, I ſaw the *Dorſetſhire* engaged; and I ſaw the Three Ships aſtern to Windward of her.

Q. What time did you ſee her?

A. After we had ſhot ahead, when we had been engaged about an Hour.

Q. How long did you engage, before you hauled your Wind?

A. About an Hour.

Q. Did the *Namur* haul up to Windward after that Hour?

A. I can't ſay ſhe hauled to Windward; becauſe the Yards were braced, and the Bow-lines hauled and trimmed ſharp, while the *Namur* was engaged.

Q. Did you ever ſee the *Royal Oak* fire at the Enemy?

A. No, never.

Q. Did you ſee the *Royal Oak*, when the *Marlborough*'s Maſts went away?

A. No.

Q. Then you can give no Account of the *Royal Oak*?

A. I can't ſay any thing more of her, but that I ſaw her to Windward after we ſhot ahead.

Q. Do you think ſhe might have bore down to the Enemy? — Was there any of the *Spaniſh* Ships for her properly to engage?

A. I imagined, as ſhe was to Windward, ſhe might have bore down, and engaged.

Q. What Diſtance was ſhe then?

A. I can't tell.

Q. How long did you look at the *Royal Oak*?

A. I only took a Glance-look at her, as being One of the Four Ships to Windward.

Q. When did you obſerve her?

A. Only when I fired the Gun as a Signal for the *Anne Galley* Fireſhip to bear down.

Q. You ſay, You ſhot ahead from the *Marlborough*: Did you break the Line by it?

A. I think not: I obſerved the *Marlborough* when her Maſts went away; and then ſhe was a little to Leeward.

Q. How far was ſhe to Leeward?

A. About a Cable's Length upon our Lee-Quarter.

Q. When the *Namur* ſhot away from the *Marlborough*, Did ſhe haul the Wind, or only ſhoot ahead?

A. She ſhot ahead; I don't know whether ſhe hauled the Wind.

Q. Do you remember any thing of the *Namur*'s engaging the *Real* with her Stern-Chace?

A. Yes.

Q. How long did you fire your Stern-Chace, after you ſhot ahead?

A. We fired our Stern-Chace ſome time after we ſhot ahead; but I can't tell how long.

Q. Did you ſhoot ahead ſo much as to bring your Stern-Chace upon the *Real*; or did you luff?

A. I imagine ſo: After an Hour's Engagement we ſhot ahead; and after we were ſome time ſhot ahead, we engaged the *Real* with our Stern-Chace.

Q. Was it obſerved in your Ship, that the Four Ships aſtern did not do their Duty?

A. Yes; it was an Obſervation made by a great many People: We ſaid among one another, That thoſe Ships might have bore down.

Q. Then there were Ships to bear down to; were there?

A. Yes.

Q. If the Four Ships aſtern had bore down, Would there have been any Ship for the *Royal Oak* properly to have engaged?

A. I can't ſay that.

Q. When you was ſhot ahead from the *Marlborough*, What Diſtance was the *Marlborough* then from the *Real?*

A. I don't know.

Q. What Diſtance was you then from the *Real?*

A. I can't tell.

Then he withdrew.

Captain *Marſh*, of the *Winchelſea*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 40.): And he declared the ſame to be true.

Q. I think you was appointed to repeat Signals, and to obſerve the Motions of the Fleet?

A. Yes, I was ordered to repeat Signals; but I was not ordered to take notice of the Behaviour of the Ships.

Q. Can you give an Account of the *Royal Oak?* You ſay, in your Depoſition, She did not bear down as the *Marlborough* did.

A. It is my Opinion, ſhe did not bring to in the Line of Battle.

Q. Did you ſee the *Royal Oak* engage?

A. Yes.

Q. Was ſhe within Point-blank?

A. I think ſhe could not be within Point-blank, becauſe I could not ſee any Ship ſhe had to engage, till towards the Evening.

Q. What time was that?

A. About Four o'Clock.

Q. Could ſhe not have gone down to the Aſſiſtance of the *Marlborough*, and have engaged the *Hercules?*

A. I believe ſhe might; but there were Three Ships between her and the *Marlborough*; and I did not ſee any other Ships for them to engage, unleſs they had wore, and ſtood to the Northward——If the *Royal Oak* had ſtood up to engage the *Hercules*, they would have been all together.

Q. Could the *Royal Oak* have gone and engaged the *Hercules*, without going out of her Station?

A. No, ſhe could not.

Q. What Ship could the *Royal Oak* have engaged?

A. At the firſt Part of the Engagement there was no Ship abreaſt of the *Royal Oak*, for her to have engaged.

Q. Could not the *Royal Oak* have bore down, and laid herſelf in a proper Poſture to receive the Four Ships of the Enemy, and engage them as they came up?

A. Yes, ſhe might: That muſt be about Four o'Clock in the Afternoon.

Q. Did ſhe do ſo?

A. I obſerved ſhe let drop her Foreſail, and hauled to the Southward nearer to the *Rupert*.

Q. Was ſhe to Windward or to Leeward of the *Rupert?*

A. I can't be certain.

Q. Did you obſerve the *Royal Oak* to be the Leewardmoſt or the Weathermoſt of the Four Ships?

A. I cannot tell.

Q. When you ſaw her fire, Was ſhe within Point-blank of the Enemy?

A. I can't tell: As to the Diſtance, I am not a Judge.

Q. When ſhe hauled to the Southward, Do you mean that ſhe hauled off from the Enemy?

A. I think not; but only neared the *Rupert*.

Q. When you ſaw the *Royal Oak* fire upon the Enemy, How did ſhe lie with the *Namur?*

A. I am not certain; I could not diſtinguiſh; but, I believe, to Windward.

Q. When you obſerved the *Royal Oak* to let fall her Foreſail, and run up with the *Rupert*, Did you obſerve which Way the *Namur*'s Head lay?

A. I did not obſerve.

Q. Did you obſerve any Signals made by the Admiral, during the *Marlborough*'s Diſtreſs?

A. To the beſt of my Remembrance, the Signal for the Fireſhip to bear down was made juſt after the *Marlborough* loſt her Maſts; and I did not obſerve any other Signal.

Q. When the Four *Spaniſh* Ships were comeing up, How had they the Wind?

A. I think they had the Wind a Point before the Beam.

Q. Did they bear away, to keep out of Gunſhot of our Ships?

A. I cannot tell.

Q. Do you remember the Time Captain *Williams* fired at the Enemy?

A. I cannot tell.

Q. Was it before or after the *Marlborough*'s Maſts went away?

A. I believe it was before the *Marlborough* loſt her Maſts.

Q. Did you obſerve the Time the *Marlborough*

rough run her Bowſprit over the *Namur's* Taffarel?

A. I cannot poſitively tell; but I think it was about an Hour, or leſs, after they began to engage.

Q. How was the Wind at that time; and how did the Ships lie?

A. I am not certain.

Q. Were the Admiral and *Marlborough* cloſe upon a Wind?

A. I can't ſay.

Aſked by the Priſoner,

Q. What Sail had the *Spaniſh* Ships that were coming up ſet?

A. To the beſt of my Remembrance, they were under their Topſails and Foreſails.

Q. At what time was the *Royal Oak's* Foreſail ſet?

A. About Three o'Clock, to the beſt of my Remembrance; but I am not certain of it.

Court aſked,

Q. You took notice of the *Royal Oak*'s Fireing; Did you obſerve what ſhe fired at?

A. I don't know; the *Spaniſh* Ships were then at a great Diſtance, but I can't tell what Ships ſhe was firing at.

Q. What Diſtance were they from the *Royal Oak?*

A. I am not a Judge of their Diſtance from her.

Q. Did you obſerve any Shot fly over the *Royal Oak?*

A. No, I don't remember to have ſeen any.

Q. Did thoſe Ships fire at all?

A. Yes, I ſaw ſome firing, but not in particular at the *Royal Oak.*

Then he withdrew.

Lieutenant *Palliſſer*, of the *Eſſex*, called in, and ſworn.

His Depoſition read (as in Captain *Buriſh*'s Tryal, Page 42.): And he declared the ſame to be true.

Q. What time did you ſee the *Royal Oak* engage?

A. About an Hour after the Admiral began.

Q. What Ship did ſhe engage?

A. I think the Second of the *Spaniſh* Ships aſtern.

Q. Did ſhe ever run down ſo far to Leeward, as to be in a Line with the Admiral?

A. No, I can't ſay ſhe ever did.

Q. Was ſhe within Point-blank?

A. I believe ſhe was not within what is properly called Point-blank; but ſhe was near enough to do Execution.

Q. How long was ſhe engaged?

A. Not above Half an Hour.

Q. Was that the whole Time of her Engaging?

A. The whole Time of her Engaging, within that Diſtance.

Q. How long did ſhe engage in the Whole?

A. She then hauled up under the *Rupert*'s Stern, and to Leeward withal; and ſhe fired afterwards at a greater Diſtance, within random Shot.

Q. Did you perceive any Reaſon ſhe had, for leaving off that cloſe Engagement? Had ſhe received any Damage?

A. No: There was no Damage that I could perceive ſhe had received.

Q. After the *Royal Oak* hauled up under the *Rupert*'s Lee-Quarter, did ſhe continue firing?

A. She could not at that Diſtance, ſhe was too far off: She ceaſed a little time, and afterwards fired again at too great a Diſtance.

Q. Was this before the *Marlborough*'s Maſts were carried away, or after?

A. Rather before:—The *Royal Oak* bore down with the Admiral; and, when he began the Engagement, ſhe continued going down, till ſhe fell abreaſt of the Second Ship.

Q. Are you certain ſhe hauled up?

A. Yes: I am certain of it.

Q. I think you ſay ſhe engaged at a proper Diſtance, for Half an Hour?

A. Yes: About Half an Hour.

Q. Did you ever hear any Reaſon, Why the *Royal Oak* hauled off from the Enemy?

A. I believe ſhe hauled up to ſpeak with the *Rupert:* I heard it ſaid ſo.

Q. Did you obſerve the *Royal Oak* ever bear away again, after hauling up under the *Rupert*'s Lee-Quarter?

A. Yes: Both ſhe and the *Rupert* bore away towards the Evening, a little before the Admiral wore.

Q. How long before?

A. I can't ſay, how long before.

Q. With reſpect to your Ship, How did the *Royal Oak* bear while ſhe was engaged?

A. Almoſt aſtern: I ſaw her over the Larboard-Quarter; and the Enemy, at that time, were about aſtern.

Q. How did your Ship lay then?

A. We were directly acroſs the Line.

Q. How did the Admiral then bear from you?

A. Upon our Starboard-Beam.

Q. When the *Royal Oak* laſt bore away, Were there any Ships for her to have engaged?

A. She was then firing at thoſe Ships, tho' not ſo near as at firſt.

Q. At the time the *Royal Oak* was firing at firſt, What other Ships were within Gun-ſhot?

A. When the *Royal Oak* firſt began to fire, there was no other Ship near enough to the Five *Spaniſh* Ships, to engage any of them, but herſelf.

Q. And you think ſhe was near enough to do Execution?

A. Yes: I think ſhe was.

Q. Where was you quartered?

A. Upon the Lower-deck; but I was moſtly upon the Upper-deck.

Q. Did

Q. Did you obſerve the Admiral, from the Time of his beginning to engage, till about Four or Five o'Clock, make any conſiderable Alteration in his Courſe?

A. Yes.

Q. How long after he began?

A. In leſs than an Hour after he began to engage, he hauled up.

Q. Can you judge, How many Points he hauled up from the Poſition he began to engage in?

A. He was going Large, while engaging; and when he hauled up, he appeared to be cloſe to the Wind.

Q. How did the *Namur* appear to you, before and after ſhe hauled off?

A. I ſaw her Larboard-Quarter before ſhe hauled off; and after ſhe hauled off, her Broadſide was toward us.

Q. When the *Royal Oak* firſt engaged the Enemy, How did ſhe lie with reſpect to the *Namur*?

A. She was not at any time in a Line with the *Namur*, before the *Namur* hauled off; but I don't know, whether ſhe was ſo far to Leeward as the *Namur* or not, when the *Namur* was hauled off.

Q. Did you obſerve what the *Royal Oak* was doing, when the Admiral hauled off?

A. I did not obſerve.

Q. Did you ever obſerve the *Royal Oak*, in the latter Part of the Action, run under the *Marlborough*'s Stern, and give her Three Cheers?

A. I did not: She bore away a ſhort time before the Admiral wore, and went under the *Marlborough*'s Stern.

Q. Was you, at any time of the Engagement, in a Line with the Admiral?

A. No.

Q. Was the *Royal Oak* ever in a Line with the Admiral, during the Firſt Part of the Engagement?

A. I think ſhe never was: For the Five *Spaniſh* Ships ſeemed to be in a direct Line with their Admiral; and the *Royal Oak* was never ſo near to thoſe Ships, as the Admiral was to the *Real*.

Q. What Ship was neareſt to the *Marlborough*, when ſhe loſt her Maſts?

A. The *Dorſetſhire*.

Q. What Ship was next?

A. We were next in Station; but we kept to Windward.

Q. What Ships, of the Four aſtern of the *Marlborough*, were moſt to Leeward, and neareſt to the Enemy?

A. The *Dorſetſhire* was neareſt to the *Marlborough*; the *Eſſex* greatly to Windward of her; the *Rupert* to Leeward of the *Eſſex*, and the *Royal Oak* to Leeward of the *Rupert*, and was the neareſt to the *Spaniſh* Ships coming up.

Q. Did you obſerve any Signal made by the Admiral, after the *Marlborough*'s Maſts were carried away?

A. No.

Q. Which was moſt to Leeward, the *Dorſetſhire*, or the *Royal Oak*?

A. The *Dorſetſhire* was neareſt to the *Marlborough*, and the *Royal Oak* was neareſt to the ſternmoſt Ships of the Enemy.

Q. Did the *Royal Oak* lie in a proper Poſition to receive the *Spaniſh* Ships that were coming up?

A. She bore down properly, till ſhe got abreaſt of the Second of the *Spaniſh* Ships; and then ſhe brought to; but not ſo near to them, as to be in a proper Poſition.

Q. Did any other Ship bear down with the *Royal Oak* at firſt?

A. There was no Ship went down ſo near as ſhe; and ſhe was near enough to do Execution.

Q. How long did ſhe continue ſo?

A. About Half an Hour, and then hauled up to the *Rupert*.

Q. Did the Enemy's Shot reach the *Royal Oak* then?

A. Yes: I ſaw ſome Shot come over her.

Q. When the *Royal Oak* hauled off from the *Spaniards*, Had ſhe any Appearance of Damage?

A. No; not that I ſaw.

Q. Did ſhe fire briſkly?

A. Yes: She was engaged very ſmartly, juſt before ſhe hauled off.

Q. What did ſhe haul off for?

A. I was told, It was only to ſpeak to the *Rupert*.

Q. Was the *Royal Oak*, at the time of her hauling off, ſo far to Leeward, as to form the Line from the Centre?

A. I think ſhe was not.

Priſoner aſked,

Q. Do you remember to have obſerved the *Spaniſh* Ships I engaged with, to bear away, when I hauled up to ſpeak to the *Rupert*?

A. I did not obſerve, that thoſe Ships altered their Courſe, while the *Royal Oak* was engaging.

Priſoner. Yes; but they did.

Witneſs. I did not take notice that they did.

Q. Did you obſerve them to bear away afterwards?

A. Yes: When they got nearer to their own Admiral, and he bore away, they edged away after him.

Q. Did you obſerve any Ship come down to the *Royal Oak*?

A. No.

Then he withdrew.

Lieutenant *Gore*, of the *Eſſex*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 49.): And he declared the ſame to be true.

Q. Where

Q. Where was you quartered?

A. Upon the Lower-deck.

Q. Was you not upon the Upper-deck?

A. I was not upon the Upper-deck at all.

Q. How often did you ſee thoſe Ships, during the Engagement?

A. Very often: I ſaw them moſt Part of the Day, after we left off Firing.

Q. Did you ſee the *Royal Oak* engage, dureing the Action?

A. Yes; I ſaw her fire.

Q. Do you think ſhe was near enough to do Execution?

A. No; ſhe was not.

Q. Was ſhe not near enough in the Evening?

A. No; I think not at any time, till after we wore.

Q. When firſt ſhe engaged, at what Diſtance might ſhe be from the Enemy?

A. A Mile, or better.

Q. Do you think her Shot fell ſhort?

A. Yes; and did not do Execution: She was not within Point-blank; and was not near enough to do Execution.

Q. Did you ſee her Shot fall ſhort?

A. No; but I ſaw the *Rupert*'s, and there was but very little Difference between them.

Q. Was ſhe not at a greater Diſtance from the *Rupert* one Part of the Day, than ſhe was at the other?

A. I think ſhe was much at the ſame Diſtance moſt Part of the Day; and the *Royal Oak* was upon the *Rupert*'s Lee-Quarter.

Q. Then ſhe muſt be nearer the Enemy than the *Rupert* was?

A. Yes, ſhe was; the *Royal Oak* was to Leeward of the *Rupert* about a Cable's Length.

Q. Did you obſerve the *Royal Oak* ſingly to bear down towards the Enemy?

A. No.

Q. Did you obſerve the Ships?

A. Yes; I often looked out of the Ports, having little elſe to do.

Q. How far to Leeward was the *Royal Oak* from the *Rupert?*

A. About a Cable's Length to Leeward.

Q. Did you ſee any Shot go over the *Royal Oak?*

A. No; never.

Q. Did you ſee the Shot fall ſhort?

A. I ſaw the Enemy's Shot fall ſhort of the *Rupert*, and the *Rupert*'s fall greatly ſhort of the Enemy; and as the *Royal Oak* was but little to Leeward of the *Rupert*, I imagine her Shot could not do Execution: I did not ſee any Shot fly over either the *Rupert*, or *Royal Oak*; though the Enemy's Shot went farther than theirs.

Q. Did you ſee the *Marlborough*'s Maſts go away?

A. Yes.

Q. Was the *Royal Oak* then in a Line with her?

A. No; ſhe was to Windward of her.

Q. How far was the *Royal Oak* to Windward of her?

A. I can't tell: She might be about Half a Mile diſtant from her, to Windward, and aſtern withal.

Q. How did ſhe lie with the Admiral?

A. I can't ſay.

Q. Had you any thing to interrupt your Obſervation during that Time?

A. Not after we left off Firing.

Q. What time did you leave off Firing?

A. About Two o'Clock.

Q. Did you obſerve the *Royal Oak*, when ſhe firſt began to engage?

A. Yes.

Q. Could ſhe have gone more to Leeward than ſhe did, without breaking the Line?

A. Yes: She never was in a Line with either the Admiral or *Marlborough*.

Q. Could ſhe have aſſiſted the *Marlborough?*

A. Yes.

Q. But could ſhe have done it, without going out of her Station?

A. No, to be ſure; I think ſhe could not, as there were Three Ships between them.

Q. Which was the Leewardmoſt of our Four Ships aſtern of the *Marlborough?*

A. The *Dorſetſhire*.

Q. Which was the next Leewardmoſt?

A. The *Royal Oak*; the *Rupert* was the next, and the *Eſſex* moſt to Windward.

Aſked by the Priſoner,

Q. Did you obſerve any of the *Royal Oak*'s Shot fall ſhort?

A. No; I did not.

Q. How far was the *Eſſex* to Windward of the *Rupert*, when you obſerved the *Royal Oak* and *Rupert?*

A. Better than Half a Mile; I believe about Half a Mile to Windward of the *Rupert*, and the *Rupert* about a Cable's Length to Windward of the *Royal Oak*; and I ſaw the Enemy's Shot fall greatly ſhort of the *Rupert*.

Court aſked,

Q. Did you ſee the Enemy's Shot fall ſhort of the *Royal Oak?*

A. I can't ſay that: I ſaw the *Rupert*'s Shot fall ſhort, and the Enemy's too; but their Shot went farther than the *Rupert*'s.

Q. Did you obſerve any Shot come over the *Royal Oak?*

A. I did not obſerve any.

Priſoner aſked,

Q. Did you obſerve the *Royal Oak*, in the Afternoon, bear down nearer the Enemy?

A. I can't ſay that I did, till after we wore.

Then he withdrew.

Lieutenant *Peyton*, of the *Eſſex*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Trial, Page 50.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. Did you ſee the *Royal Oak* engage the Enemy, in any Part of the Engagement?

A. Yes: I ſaw her fire about Three o'Clock.

Q. At what Diſtance.

A. About Point-blank.

Q. Don't you think ſhe was within Point-blank?

A. I don't think ſhe was.

Q. How long did ſhe continue ſo engaging?

A. I don't know how long; for my Eyes were not always upon her: But I believe about Half an Hour, or more.

Q. Did you ſee her haul off, or edge down afterwards?

A. I did not ſee her haul off, or bear down.

Q. How long did you ſee her in that Engagement?

A. About Half an Hour, or more.

Q. Did you ſee her fire after that?

A. No.

Q. What was the Reaſon of her leaving off Firing?

A. I can't tell her Reaſon: She ſeemed to be out of Shot, and I ſuppoſe That to be the Reaſon.

Q. Was ſhe the Leewardmoſt of our Four Ships aſtern of the *Marlborough*?

A. Yes, ſhe was, till the *Dorſetſhire* bore down in the Evening.

Q. Was ſhe always the Leewardmoſt, until that Time?

A. Yes; it is my Opinion ſhe was.

Q. What Diſtance was the *Royal Oak* from you, when the Admiral brought up to engage?

A. I can't tell.

Q. Did you ſee the Admiral, when he hauled off?

A. I did not ſee him haul off; but I ſaw him a little after he had hauled off.

Q. Did you take notice of the *Royal Oak* then?

A. I did not.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. Did you never ſee the *Royal Oak* to Leeward of the *Marlborough*, before the Admiral wore?

A. No.

Q. What Time did you ſee the *Royal Oak* neareſt to the Enemy?

A. About Three o'Clock.

Q. Did ſhe haul up, or did the Enemy bear away?

A. They went with the Wind larger than ours.

Q. Do you think they bore away, to go from the *Royal Oak*'s Fire?

A. I can't tell that.

Q. Were they then keeping in a proper Line with their Admiral?

A. I think they ſteered to Leeward of him.

Q. Do you imagine, when they ſeemed to be ſteering to Leeward of their Admiral, that they were then to Windward or to Leeward of their Line?

A. I believe they were pretty well in a Line, but rather to Leeward.

Q. How was the *Royal Oak* with our Admiral at that time?

A. I don't know—I am ſpeaking, that in the Courſe of the Afternoon they ſteered ſo; when their Admiral bore away, they edged after him.

Priſoner asked,

Q. Do you remember how the *Dunkirk* bore of us?

A. I don't know; I don't remember any thing of the *Dunkirk*.

Then he withdrew.

Joſeph Myers, Maſter of the *Eſſex*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 52.): And he declared the ſame to be true.

Q. Did you ever ſee the *Royal Oak* engaged with the *Spaniards?*

A. Yes.

Q. At what time?

A. About Three o'Clock.

Q. What Diſtance was ſhe from the Enemy?

A. About Three o'Clock, ſhe was near enough to do Execution, if not within Point-blank, by the Diſtance I ſaw the Enemy's Shot fly over her.

Q. Are you ſure ſhe was within Point-blank?

A. I can't ſay what Point-blank is; but I ſaw the Enemy's Shot go over her.

Q. How long did ſhe engage ſo?

A. A great Part of an Hour; more than Half an Hour.

Q. What did ſhe do, after ſhe had done Engaging?

A. I ſaw her haul up again a little; but to Leeward of the *Rupert*.

Q. When ſhe ſo hauled up, Would her Shot do Execution?

A. No; I can't ſay, then; though I ſaw the Enemy's Shot reach her, after ſhe hauled up.

Q. What was the Reaſon of her hauling up?

A. I can't tell any otherwiſe than I have heard from the Officers: I don't know any other Reaſon, unleſs it was, that ſhe had a Shot in her Main-maſt.

Q. How do you know ſhe had?

A. I ſaw it: They ſhew'd it to me ſome time after the Engagement.

Q. In what Part of the Maſt was the Shot?

A. It entered at the After-Part of the Maſt; and the Officers of the Ship told me, it was received while the *Royal Oak* was hauling off.

Q. Do you think the *Royal Oak* was as far to Leeward as the Admiral?

A. No; not at the Beginning of the Engagement; but after the Admiral hauled off, and while the *Royal Oak* was engaging ſo as to do Execu-

Execution, ſhe was in a Line with the *Namur*; but, after that, the *Royal Oak* hauled up again, ſtill keeping to Leeward of the *Rupert*.

Q. Was ſhe ever ſo far to Leeward as the *Marlborough*?

A. No.

Q. Do you think the *Royal Oak* was to Leeward of the *Dorſetſhire*, during the Engagement?

A. I can't ſay, becauſe we were ſo far to Windward.

Q. Did you obſerve her bear down a Second time, after ſhe had hauled up?

A. No, not till they wore in the Evening.

Priſoner aſked,

Q. How far was the *Dunkirk* aſtern of the *Royal Oak*, at the time ſhe was engaged?

A. I believe, about a Mile and an Half.

Court aſked,

Q. How did ſhe lie from the *Royal Oak?*

A. Broad upon her Weather-Quarter, or near upon her Beam.

Priſoner aſked,

Q. Did you obſerve any Ship aſtern, nearer to the *Royal Oak* than the *Dunkirk* was?

A. I can't ſay that any was, at the time of the *Royal Oak*'s Engaging; but I once obſerved the *Cambridge* to be nearer to the *Royal Oak*, being greatly to Leeward of the *Dunkirk*.

Then he withdrew.

Lieutenant *Wilſon*, of the *Royal Oak*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 56.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. What time did the *Royal Oak* firſt begin to engage?

A. About Two o'Clock.

Q. How near was you then to the Enemy? Was you within point-blank Shot?

A. No, I don't think we were; becauſe we were not near enough to do Execution with Small Arms.

Q. Was you near enough to do Execution with round Shot?

A. We were near enough to cut Rigging to-pieces; but not near enough to do proper Execution.

Q. How long was you ſo engaged?

A. About Half an Hour.

Q. How near was you to the Enemy?

A. I believe we were within Half a Mile, when we firſt engaged; and then we bore down nearer, after hailing the *Rupert*.

Q. How much nearer?

A. We then engaged within about a Quarter of a Mile.

Q. Did you hail the *Rupert?*

A. We hailed the *Rupert*; but I did not hear any Anſwer ſhe made.

Q. How long did you engage at about a Quarter of a Mile's Diſtance?

A. Very near an Hour.

Q. Was it ſmartly?

A. Yes.

Q. What Ship did you engage then?

A. We engaged Four; the Four fired upon us.

Q. How many of the Enemy were within point-blank Shot?

A. I don't believe any of them were: They were within a Quarter of a Mile.

Q. Was you not within Point-blank, when you was within a Quarter of a Mile of them?

A. No, I don't think we were within Point-blank.

Q. What did you do then?

A. We hauled up again, not obſerving any Ship come near us; and, in Hauling up, a Shot was received in the After-Part of the Main-maſt.

Q. What Execution was done on board of you?

A. Our Rigging and Sails were cut; there was One Shot in the Main-maſt, and about Six or Seven Foot of the Mizen-yard ſhot away.

Q. How many Men had you killed?

A. We had no Men killed; but we had Five wounded.

Q. Did the Shot go through your Main-maſt?

A. No, it is in the Main-maſt ſtill; it is a round Shot. There was One Shot buried in the Rudder; another Shot about Two Foot under Water, which did not go quite through; but the Water juſt weeped into the Fiſh-room.

Q. Did you ſtand the Fire of the whole Four Sail?

A. Yes; they all fired at us.

Q. Do you think the Enemy could have weathered you, if you had not hauled up?

A. Yes, I believe they would.

Q. How many Shot hulled you?

A. Fourteen or Fifteen.

Q. Did any of them go through your Sides?

A. Some of them went through one Side, and ſtuck in the other.

Q. Was there any Shot came in between Decks?

A. I don't know.

Q. Was you forced to heel the Ship for that Shot that came in Two Foot under Water?

A. It was received in the Engagement, but not found out till afterwards; and was on the Leeward Side.

Q. When did you find it out?

A. We did not find it out, till we were ſcrubbing the Ship, after we came into *Mahon*.

Q. When you firſt began to engage, Was you in a Line with the Admiral?

A. No; the Admiral was upon our Lee-Bow.

Q. When

Q. When you bore down nearer to engage, Do you think you was then in a Line with the Admiral?

A. Yes, or rather to Leeward of him.

Q. Was the Admiral then hauled off?

A. Yes.

Q. Was you then in a Line with the *Marlborough?*

A. No, never, till we wore in the Evening.

Q. Did you hear Captain *Williams* give any Reaſon for not Bearing down nearer?

A. No; but he was very angry, ſtamping upon the Deck; and I heard him ſay, Why don't thoſe Ships bear down?

Q. What Ships did he mean?

A. He muſt mean the Ships that were ahead of us, the *Eſſex* and *Rupert*: The *Rupert* was the neareſt Ship to aſſiſt us.

Q. What Diſtance might the *Rupert* be from you, when you had laſt bore down nearer to the Enemy?

A. About a Cable's Length.

Q. How near was you then to the Enemy?

A. A little more than a Quarter of a Mile.

Q. Do you think you was not within Point-blank?

A. No, I don't think we were, unleſs a Quarter of a Mile is within Point-blank; I never thought that we were within Point-blank.

Q. Did you lower the Metal during the Engagement?

A. Yes; the Quoins were taken out of the Upper-deck Guns.

Q. Did you ever, during the Engagement, engage the Enemy as near as the *Marlborough* did the *Real?*

A. No.

Q. Was it in your Power to do ſo?

A. Yes.

Q. You ſay, Captain *Williams* expreſſed a Concern, that the Ships did not bear down.

A. Yes.

Q. Did You bear down?

A. Yes, we bore down then; and Captain *Williams* hailed the *Rupert*.

Q. When you hailed the *Rupert*, What Anſwer did they make?

A. I did not hear any.

Q. What did Captain *Williams* ſay, when he hailed the *Rupert?*

A. He aſked him, Why he would not go down nearer; but I did not hear any Anſwer.

Q. Were there Four or Five *Spaniſh* Ships aſtern of the *Hercules?*

A. I think there were Five; Four were together, and the other a little ſtraggling; I think there were Six in all aſtern of the *Real*.

Q. Were they in a Line with their Admiral?

A. They were in a pretty good Line.

Q. Were thoſe all round Shot that hulled you?

A. I believe all of them.

Q. Had you not ſome double-headed Shot, or Grape-ſhot?

A. I ſaw none, nor heard of none.

Q. What Time was it you bore under the *Marlborough*'s Stern, and cheered her?

A. About Five o'Clock; as we run under her Stern in Wearing, ſhe cheered us.

Q. Was ſhe then in Action?

A. No.

Q. Was the *Real* bore away then?

A. Yes.

Q. When you engaged the Second time, Was you not as far to Leeward, as the *Namur* was, when ſhe firſt began to engage?

A. No, we were not.

Priſoner asked,

Q. Did not the Ship heel very much, by having Six Guns more on the Lee-Side, and the Men on that Side alſo? And was not the Shot, which was received, conſiderably under Water, when the Ship was upright?

A. Yes.

Q. How much was that Shot under Water?

A. I believe, about Two Foot, when the Ship was upright.

Q. Do you remember my telling you, That I made Sail to the *Rupert* again, becauſe there was no other Ship coming up aſtern; and the *Rupert* was the neareſt Ship to me, to deſire her Aſſiſtance?

A. Yes, you did.

Priſoner. There was no Ship near me, and Four of the Enemy firing upon me all at once; for I believe I ſhall prove, That the Shot which was in the Main-maſt, was from the ſternmoſt of the Four Ships.

Court. When you made Sail to the *Rupert* a Second time, Did you deſire her Aſſiſtance?

Priſoner. No; not the Second time.

Court asked,

Q. What Sail had the *Spaniſh* Ships ſet?

A. Foreſails, Topſails, and Top-gallant-ſails.

Q. What Sail had you?

A. Topſails, Main-top-maſt Stay-ſail, and Jib; which laſt Sail we ſet, when we hauled up for the *Rupert*.

Priſoner asked,

Q. Don't you believe the *Spaniſh* Ships edged away more than we did?

A. I can't ſay they did at that Time; but after their Admiral bore away, they edged away after him; but then I think we were not engaged.

Q. Were we ever out of Gun-ſhot of them?

A. No, never after we began to engage, for the whole Day; for their Shot went over us, as far as we were diſtant from them, though we were never within Point-blank.

Court asked,

Q. What Diſtance do you take Point-blank to be?

A. About Two hundred Yards.

Q. Was you ever ſo near the Enemy as Two hundred Yards; which is a Cable's Length?

A. No, we were not.

Q. Was you ever within Two Cables Length of the Enemy?

A. No,

A. No, I think we were never nearer than a Quarter of a Mile, till after we wore.

Priſoner asked,

Q. Do you think, in the Condition we were in, without any Ship to ſecond us, That we ought to have gone nearer to the Enemy than we did?

A. I think we ought not, becauſe thoſe Ships would have cut us off.

Q. Did you ever obſerve any Apprehenſions or Signs of Backwardneſs in me to engage? Do you think I endeavoured to get away from the Enemy, or avoided Engaging with them?

A. No; I always ſaw Captain *Williams* behave with great Spirit; and angry, that the other Ships would not go down: I heard him ſwear upon Deck, becauſe they would not go down.

Q. Did you ever hear any body in the Ship condemn me, or complain of my Behaviour?

A. No, never.

Q. Do you think I would have left off, if any of our Ships had come to my Aſſiſtance?

A. No, I verily believe, not; but Captain *Williams* fretted very much, that he could not be aſſiſted; and I believe would have been glad to have gone down nearer.

Court asked,

Q. Did you hear Captain *Williams* ſay, He would have gone down nearer, if any other Ships had come to his Aſſiſtance?

A. No; but he was very uneaſy at *Port-Mahon*, that he could not go down to join the Admiral, leſt he ſhould not be in Time to engage the Enemy.

Priſoner. I am ſure I loſt no Time in preparing to join the Admiral.

Then the Witneſs withdrew.

Lieutenant *Turner*, of the *Royal Oak*, was called in, and ſworn.

His Depoſition read:

Lieutenant Edmund Turner *maketh Oath*;

THAT he was Lieutenant on board his Majeſty's Ship the *Royal Oak*, in the *Mediterranean*, in the Month of *February*, 1743.

That Admiral *Mathews*, and the *Marlborough*, about Half an Hour paſt Twelve, began to fire upon the *Real*.

That all the Captains aſtern were in Sight of the Signal to engage, and of the Engagement.

That, during the Engagement, the *Royal Oak* was to Windward of the *Marlborough*; and that he ſaw the *Rupert* out of the Weather-Ports of the *Royal Oak*, and the *Dunkirk* on the *Royal Oak*'s Weather-Quarter; and believes, about a Mile to Windward of the *Royal Oak*; and that he ſaw the *Eſſex* a little before the Beam of the *Royal Oak*.

That Captain *Williams* ordered them to leave off Firing, thinking the Shot did not reach the Enemy; but, finding the Enemy's Shot ſtrike them, they continued to fire at the Enemy: And that he heard Captain *Williams* ſwear, and cry, God's Blood, why don't they bear down? meaning (as this Deponent believes) the Ships ahead, the *Rupert*, *Eſſex*, and *Dorſetſhire*; he then looking that Way.

Edm. Turner.

Sworn, this 11th Day of *Sept.* 1745, before me

Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Gun-deck.

Q. Was you in a Line with the Admiral, when you firſt brought to?

A. I think we were, when we firſt bore away.

Q. How came you out of the Line?

A. I went down to my Quarters, and don't know; for I could not ſee what was done.

Q. How far was you from the Enemy, when you firſt began to engage?

A. I believe about Half a Mile.

Q. How long did you engage at that Diſtance?

A. I can't tell the Time; I believe it was about Half an Hour.

Q. What did you do afterwards?

A. I think we went nearer to the Enemy; but I am not certain, becauſe I was not upon Deck, but at my Duty between Decks.

Q. What Diſtance was you from the *Marlborough?*

A. Really I can't tell.

Q. Could you have gone down, and aſſiſted the *Marlborough?*

A. Yes, if we had Orders to have done ſo.

Q. Do you think you was near enough to do good Execution?

A. Yes, I believe ſo; becauſe the Enemy's Shot went through us.

Q. Was that at the Time you bore down nearer?

A. Yes, it was.

Q. What Shot did you receive?

A. There were Two went through the Cut-water; One through the beſt Bower Anchor-Stock; One through the Starboard-ſide, upon the Upper-deck, and lodged in the other Side; the Cell of one of the Ports tore to-pieces; One through the Lower-deck Port; One ſtruck about Two Foot under Water, and occaſioned a Leak in the Fiſh-room; One in the Rudder; One in the Main-maſt; Six or Eight Foot of the Mizen-yard ſhot away; the Larboard Cheek of the Mizen-maſt ſhot away; the Mizen Top-maſt wounded in Two Places.

Priſoner asked,

Q. Did no Shot hit us, before we began to engage?

A. Yes, One; and many went over, through our Sails, before we began.

Court asked,

Q. You ſay, You was upon the Gun-deck: Do you recollect, what Elevation you gave your Guns, during the Engagement?

A. We

A. We lowered the Metal a little; I believe the Quoins were out.

Q. What Diſtance was you from the Enemy, when you engaged neareſt?

A. About a Quarter of a Mile; I can't ſay exactly.

Q. What Number of Men had you killed?

A. Not one; there were ſome wounded.

Q. Were your Weather-Guns run out?

A. Yes; we run them all out, to raiſe the Lee-Guns.

Priſoner. We had Six Guns more on the Side we engaged with, than we had on the other Side.

Q. What time did Captain *Williams* order you to leave off Firing, becauſe the Shot did not reach?

A. I can't ſay the Time; it was a little while after we began to engage; and then I came upon Deck; and, finding the Enemies Shot to go over us, I returned again to my Quarters, and renewed the Fire.

Q. Were the *Marlborough*'s Maſts gone then?

A. I can't ſay.

Q. Did you bear away afterwards;

A. I can't ſay.

Q. Did you ſee the *Marlborough* engage the *Real?*

A. Yes.

Q. Was you ever ſo near as the *Marlborough?*

A. No.

Q. The Shot which you received, were they before or after you wore?

A. Moſt of them were before.

Asked by the Priſoner,

Q. Do you think I endeavoured to go from the Enemy, or keep back from the Engagement?

A. I really believe, not: I am ſure you did not.

Q. Do you believe I ſhould not have continued to engage, if any Ships had bore down to ſuccour me?

A. Yes, I am ſure you would have kept as cloſe to them as anybody would, if you had anybody to ſuccour you: The Captain was in very good Spirits all the Day; and, when he firſt came into the Fleet that Day, he ſaid, He did not doubt, but we ſhould have a glorious Day; and Captain *Williams* ſeemed to be very much concerned when he ceaſed Firing, and was ſorry the Ships did not bear down to his Aſſiſtance.

Q. Do you think we could, without very great Danger, have gone down nearer to the Enemy?

A. If we had, we muſt have been tore to-pieces.

Court aſked,

Q. How many of thoſe *Spaniſh* Ships fired upon you?

A. I think, Three.

Q. What Sail had you ſet?

A. I don't know.

Q. What Sail had the Enemy?

A. Foreſails and Topſails; and ſome of them had their Topgallant-ſails ſet; and ſome lowered.

Q. Do you remember Captain *Williams*'s hailing the *Rupert?*

A. No; I do not remember it: I was not upon Deck.

Q. During your Engaging, had you no Intermiſſion to look out and ſee whether any Ship was coming to your Aſſiſtance?

A. Yes: I frequently looked out, both out of the Lee and Weather-Ports, and never obſerved any Ships coming down: The *Rupert* was the neareſt to us; and the neareſt Ship to us aſtern was the *Dunkirk*, who was about a Mile and an Half diſtant upon our Weather-Quarter.

Q. Did the *Dunkirk* make Sail to join you?

A. I cannot ſay.

Q. How far was Admiral *Leſtock*'s Ship from you?

A. I don't remember that I ſaw Admiral *Leſtock*'s Ship.

Q. How many *Spaniſh* Ships were there coming up?

A. Five; there were Six in all aſtern of the *Real.*

Q. Do you think they could have weathered you, if you had lain to?

A. Yes: I believe they might.

Then he withdrew.

The Court adjourned till To-morrow Morning, at Eight o' Clock.

The Second Day upon Captain EDMUND WILLIAMS's *TRYAL,*

On Board His MAJESTY's *Ship the* London, *at* Chatham.

FRIDAY, 11th *October*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent as were Yeſterday, except Captain *Laton*, who could not attend, being indiſpoſed with the Gout; as appeared by his Letter to the Preſident, which was communicated to the Court.

The Marſhal brought in the Priſoner: And the Witneſſes were ordered to be called in.

James Moore, Maſter of the *Norfolk*, was called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 59.): And he declared the ſame to be true.

Q. Are you ſure the *Royal Oak* was not in her Station?

A. When we bore down, ſhe did not bear down in a Line with us.

Q. Was ſhe ever in a Line with the Admiral?

A. She was not in a Line with the Admiral, when he engaged.

Q. Did you never ſee the *Royal Oak* engage?

A. I can't ſay. I ſaw ſeveral Ships fire; but I could not diſtinguiſh one from another: In the Evening there was a great Fire; but it was impoſſible to know the Situation of the Ships.

Q. You ſay the *Royal Oak* did not aſſiſt the *Marlborough?*

A. No: No Ship aſſiſted the *Marlborough.*

Q. Could ſhe have aſſiſted the *Marlborough?*

A. She could, if ſhe had pleaſed to have gone down.

Q. Do you remember when the Admiral hauled from the *Real?*

A. Yes.

Q. What Diſtance to Windward of her did he haul?

A. About a Cable's Length.

Q. How did he engage?

A. Sometimes he came to, and ſometimes he fell off; and I ſaw him ſometimes to Leeward of the *Real.*

Q. How do you know the *Royal Oak* did not aſſiſt the *Marlborough?*

A. There was no Ship at all aſſiſted the *Marlborough.*

Q. What was the *Royal Oak*'s Station?

A. She was the laſt Ship in the Diviſion: She was to Windward of the Line, and a good Diſtance from the *Namur* and *Marlborough:* There was none of them in a Line with us, when we went down.

Q. Was the *Royal Oak* in a Line with the Admiral, after he hauled up?

A. I can't ſay whether ſhe was or no.

Q. What do you know the Line by?

A. By the *Norfolk*, *Namur*, and *Marlborough*, which were the only Ships in the Line.

Q. Was the *Royal Oak* out of the Line during the whole Action?

A. I believe ſhe might be in a Line towards the Evening; but it was about Four o'Clock before any of thoſe Ships bore down.

Q. When the Admiral firſt altered his Poſition, to get clear of the *Marlborough*, did he ſhoot ahead, or haul off?

A. He ſhot ahead, and did not haul off; afterwards he luffed up, and played his Sternchace upon the *Real.*

Q. How long was that, after he ſhot ahead?

A. About Half an Hour; and he was not a great Way from the *Real*, when he luffed up.

Q. How far was he from the *Real?*

A. Within Half Gun-ſhot.

Q. How long was the Admiral engaged, before he ſhot ahead?

A. I believe, about Two Hours; for we were an Hour and Three-quarters engaged, and he was longer than we.

Q. Which way ought the *Royal Oak* to have aſſiſted the *Marlborough?*

A. She might have bore down: She was to Windward; but, as there were more Ships between, I ſuppoſe That might be the Reaſon ſhe did not.

Q. With reſpect to the Wind and Swell, Could ſhe have aſſiſted the *Marlborough?*

A. In my Opinion, I think ſhe could.

Q. Were all the Ships, between the *Royal Oak* and the *Marlborough*, ſo diſabled, as that they could not go to the *Marlborough*'s Aſſiſtance?

A. No; but ſhe was a clean Ship.

Q. When the *Namur* was luffed up a little out of the Line, Was the *Royal Oak* to Windward, or to Leeward, of the *Namur?*

A. All thoſe Ships were to Windward.

Q. Was ſhe in a Line with the *Namur?*

A. I think not: They were all to Windward; and ſeemed to be in a confuſed manner.

Q. At what Diſtance were the ſternmoſt *Spaniſh* Ships from the *Real?*

A. About Two Miles: There was a great Space between the *Hercules* and thoſe Ships.

Q. Which was the Leewardmoſt of our Four Ships aſtern?

A. Really, I can't tell: I believe, if any, it was the *Dorſetſhire.*

Priſoner asked,

Q. Do you remember any Ship for the *Royal Oak* to have engaged?

A. I don't remember any; unleſs ſhe had gone to the ſternmoſt *Spaniſh* Ships; for there was a great Vacancy between the *Hercules* and others.

Court asked,

Q. Would ſhe not have been to Leeward of the Line, then?

A. She would, to be ſure, if ſhe had gone to thoſe Ships, and not properly cloſed in.

Q. What Diſtance was the *Royal Oak* from the *Marlborough?*

A. I can't tell: There were Six or Seven Ships between them; it might be a Couple of Miles, or more; to be ſure, they were a Couple of Miles diſtant.

Q. You ſaid, She could have aſſiſted the *Marlborough?*

A. Yes, ſhe might.

Q. What Ship could ſhe have engaged, to have done ſo?

A. What I underſtand by aſſiſting the *Marlborough,*

borough, is, She might have come down, and gone between her and the *Real*.

Q. Did you obſerve the *Eſſex*, and the other Ships aſtern, to fire?

A. Yes; I ſaw them all fire.

Court. Then conſequently ſhe muſt have run through the Fire of Three Ships, in order to get to the *Marlborough?*

Witneſs. Yes.

Q. Was there no Ship for the *Royal Oak* to engage?

A. No.

Q. Was not the *Hercules* aſtern of the *Real?*

A. Yes.

Q. And could not the *Royal Oak* have engaged her, and aſſiſted the *Marlborough?*

A. Yes, ſhe might.

Court. Then, Why do you ſay ſhe had no Ship to engage?

Q. Do you mean, that there was no Ship abreaſt of the *Royal Oak* at firſt?

A. Yes.

Q. Was there any Ship abreaſt of her, toward the latter Part of the Engagement?

A. Yes, about Four o'Clock, when the *Spaniſh* Ships came up.

Q. Was the *Royal Oak* in the Line then?

A. Yes; I believe ſhe was in the Line then.

Q. When ſhe was in the Line, at Four o'Clock, was ſhe as far to Leeward as the *Marlborough?*

A. Yes; I believe ſhe was.

Q. Then, till Four o'Clock, there was no Ship for her properly to engage?

A. No; there was no Ship for her to engage, till then, without ſhe had gone to aſſiſt the *Marlborough.*

Q. Was the *Royal Oak* then engaged?

A. Yes.

Q. Was ſhe within Point-blank?

A. I can't tell, ſhe was ſo far off; there were Six or Seven Ships between us and her; for the *Princeſſa* was then got between us and the Admiral.

Q. What Diſtance was your Ship from the *Royal Oak?*

A. Above Two Miles, to be ſure.

Q. If the *Royal Oak* had gone down ſooner, and formed the Line with the *Namur* and *Marlborough* before Four o'Clock, Was ſhe in Danger of being cut off by the Five *Spaniſh* Ships aſtern?

A. No, I believe not; the Vice-Admiral's Diviſion were to Windward; it could never have come to that.

Q. You ſeem to think they would not have weathered her: But, Could they have weathered her?

A. No, I don't believe they could have weathered her.

Q. What Diſtance was the *Royal Oak* from the *Spaniſh* Ships, when ſhe did engage?

A. I cannot tell.

Then he withdrew.

Duncan Grant, Maſter of the *Somerſet*, called in, and ſworn.

His Depoſition was read (as in Captain *Buriſh*'s Tryal, Page 61.): And he declared the ſame to be true.

Q. You ſay, Thoſe Ships to Windward were all out of the Line?

A. Yes.

Q. Was the *Royal Oak* out of the Line?

A. I could not diſtinguiſh her from the reſt; but they were all out of the Line.

Q. What Diſtance were thoſe Four Ships from the Enemy?

A. About a Mile from the Enemy: Between Three and Four o'Clock, when the Fireſhip blew up, the neareſt of them was a Mile from the Enemy.

Q. What Diſtance was the *Royal Oak* from the *Marlborough?*

A. I believe, About a Mile.

Q. Did ſhe ever engage the *Real*, or the *Hercules?*

A. Not, as I ſaw.

Q. You can give no Account of the *Royal Oak:* Did ſhe bear down, or continue to Windward?

A. She did not bear down, when I ſaw her.

Q. When did you obſerve thoſe Ships?

A. About Half an Hour after Three, when the Fireſhip blew up: I only obſerved them for about Eight or Ten Minutes; and, when I obſerved them, they were all to Windward of the Line.

Q. Did you ſee them engage?

A. No; I did not ſee them engage.

Q. Where was your Ship, with reſpect to the Admiral, when you obſerved thoſe Ships at Half an Hour after Three?

A. Ahead of the Admiral.

Q. How far diſtant from him?

A. About Three Miles, or Three Miles and an Half; and he was then upon our Weather-Quarter.

Q. Was you to Leeward of the Admiral?

A. I believe we were; I can't be poſitive.

Q. How did thoſe ſternmoſt Ships appear, with reſpect to the *Namur?*

A. They were to Windward of the *Namur*, at Half an Hour after Three o'Clock: I ſaw them ahead of the *Namur.*

Then he withdrew.

Owen Griffith, Maſter of the *Cambridge*, called in, and ſworn.

His Depoſition read (as in Captain *Buriſh*'s Tryal, Page 62.): And he declared the ſame to be true.

Q. What Diſtance was you from the *Royal Oak*, when the Engagement began?

A. About Two Miles.

Q. Did

Q. Did you never ſee her bear down to aſſiſt the *Marlborough*, at any time?

A. No.

Q. Did you never ſee her engage the Enemy?

A. I ſaw her fire, as well as the other Three; and I believe, when they firſt fired, it was at the Ship next aſtern of the *Real*, which was the *Hercules*; but afterwards, when the *Spaniſh* Ships aſtern came up, I believe the *Royal Oak* fired at the headmoſt of thoſe Ships.

Q. What Diſtance was ſhe then from the headmoſt of thoſe Ships?

A. About a Mile.

Q. Was ſhe never nearer to the Enemy?

A. I did not obſerve her to be nearer than a Mile.

Q. Was ſhe the Leewardmoſt of the Four Ships?

A. When our Four Ships firſt began to engage, the *Royal Oak* was the Leewardmoſt of them; but after the *Dorſetſhire* bore down, ſhe was then the Leewardmoſt of the Four.

Q. How long did the *Royal Oak* engage?

A. I believe ſhe began to engage about Two o'Clock; and continued Engaging, till we came down to her, which was about a Quarter after Three.

Q. How near was you to the Enemy, when you came down?

A. We were within about Three-quarters of a Mile.

Q. Then you was nearer than the *Royal Oak?*

A. Yes, we were between the *Royal Oak* and the Enemy.

Q. How long did you continue ſo?

A. We continued ſo for ſome time; and then, I remember, the *Royal Oak* filled, and ſhot ahead.

Q. What did ſhe do that for?

A. I ſuppoſe ſhe might fill to get nearer the Enemy.

Q. How long did you engage, after you fell in between the *Royal Oak* and the Enemy?

A. About Half an Hour, or Three-quarters of an Hour: About Three-quarters of an Hour.

Q. What did the *Royal Oak* do, while you was engaging?

A. She fired ſome Shot.

Q. Did ſhe continue Firing as long as you?

A. No, ſhe hauled off before us; we continued Firing after her.

Court. This is quite a new thing.

Q. Relate what you know of the Matter, from the Beginning of the Engagement.

A. When the Admiral bore down, I don't remember to have ſeen any Ships bear down in a Line with him, but the *Marlborough* and *Norfolk:* The Admiral began to engage about One o'Clock, and the *Marlborough* likewiſe: The Four Ships aſtern of the *Marlborough* fired at the Enemy about Two o'Clock; and I remember to have ſeen a good many of their Shot fall ſhort—

Q. Did you particularly obſerve the *Royal Oak*'s Shot fall ſhort?

A. Yes, I ſaw a good many of the *Royal Oak*'s Shot fall ſhort—She engaged from that Time till about a Quarter after Three, when we run under her Stern; and then we hauled our Foreſail up, and began to engage the headmoſt of the Four ſternmoſt *Spaniſh* Ships, at about Three quarters of a Mile Diſtance.

Q. What did the *Royal Oak* do then?

A. The *Royal Oak*, ſome time after we were engaged, made Sail, and ſhot ahead, about a Quarter of a Mile diſtant, upon our Weather-Bow.

Q. How long did you continue Engaging?

A. About Three Quarters of an Hour.

Q. Was ſhe in the Line then?

A. She was not in the Line then.

Q. Was ſhe to Windward, or to Leeward of you?

A. I don't remember, that ſhe was ever to Leeward of the *Cambridge*, after we run under her Stern, except when ſhe wore at Night; and the *Cambridge* was never far enough to Leeward, to be in a Line with the Centre of the Fleet.

Q. What do you take the Centre from?

A. From the Admiral.

Q. Were the Admiral and *Marlborough* then in a Line?

A. No; the Admiral was then a little to Windward of the *Marlborough*.

Q. What became of the *Royal Oak*, after ſhe ſhot ahead?

A. I don't remember, that I ſaw the *Royal Oak*, after ſhe ſhot ahead of us; but none of the Four Ships aſtern of the *Marlborough* were ever after that to Leeward of us, except the *Dorſetſhire*, after ſhe bore down.

Q. Was you within point-blank Shot of the Enemy then?

A. I think not.

Q. What Diſtance did the *Royal Oak* engage the Enemy, after you run under her Quarter?

A. Above a Mile.

Q. How long did you engage, after you run under the *Royal Oak*'s Quarter?

A. About Three-quarters of an Hour — I believe, if ever we were within point-blank Shot, it was when we engaged the ſternmoſt Ship of the Enemy; which I believe was the *Santa Iſabella*, which was the laſt Ship we engaged.

Q. What did you do then?

A. We lay inactive, with our Head to the Southward, till the Admiral wore.

Q. How long did you lie ſo?

A. I don't know exactly how long.

Q. What was the Occaſion of your lying inactive?

A. The *Spaniſh* Ships edged away, quite out of Gun-ſhot; and then we ceaſed Firing; and we and our Diviſion hauled up about the ſame time.

Q. If you had engaged thoſe *Spaniſh* Ships within Point-blank, Do you think you ſhould

not have gone to Leeward of the Centre of the Fleet?

A. I think, if we had engaged thoſe Ships properly, as Ships ought to be engaged, within Piſtol-ſhot, we ſhould then have been in a direct Line with the Centre of the Fleet, provided the *Spaniſh* Ships had not bore away.

Q. Why did you not go after them?

A. If we had, we ſhould have gone out of the Line of our Diviſion, and have left the Admiral to himſelf; for the *Torbay* was not in her Station all the Day.

Q. Did the *Spaniſh* Ships keep their Wind; or did they edge away?

A. When we firſt began to fire at the headmoſt Ship, ſhe edged away; and when ſhe was out of Gun-ſhot, hauled up again: Then we fired at the Second as ſhe came up, and ſo at the reſt; and they ſucceſſively edged away, and hauled up again, as the Firſt did.

Q. So it was You that made the Enemy bear away; and the *Royal Oak* had no hand in it?

A. I believe ſhe fired at the Headmoſt of the Four Ships.

Q. Did our Four Ships aſtern keep in a Line?

A. They ſeemed to be pretty much in a Line at firſt; but the *Royal Oak* was the Leewardmoſt.

Q. Did you ever ſee the *Royal Oak* hoiſt her Jib and Stay-ſail, to ſpeak to the *Rupert?*

A. No.

Q. When you ſhot under the *Royal Oak*'s Quarter, Was ſhe then engaged?

A. Yes, a very little time before; but ſhe ceaſed upon our coming under her Quarter, for fear of firing into us.

Q. When the *Royal Oak* made Sail from the *Cambridge*, Did ſhe make Sail ahead, with Intent to engage any other Ship?

A. I could not ſee what Ship ſhe had to engage; for there was a great Diſtance between the Ship aſtern of the *Real*, and the other Ships aſtern: There was no Ship for her to engage; and it is my Opinion, if ſhe had been in an exact Line with the Centre, ſhe would have had none to have engaged, without breaking Line.

Q. Might ſhe not have ſhot ahead, and engaged the *Hercules?*

A. She might have done it certainly; if ſhe had made Sail ahead, and gone down, ſhe might have done it; but whether it was her Duty or no, I cannot tell.

Q. Juſt when you was going under the *Royal Oak*'s Stern, Did you look at the *Namur* then?

A. Yes.

Q. How was the *Royal Oak*, with reſpect to the Centre, then?

A. She was to Windward; becauſe after we ſhot to Leeward of her, we were to Windward.

Q. Did the Enemy's Shot ever reach you?

A. Yes, a Man had his Body ſhot off in the Middle; and Two Stays were cut; and one Shot came through, upon the Quarter-Deck.

Q. Did any of your Shot fall ſhort?

A. Yes; the Firſt Broadſide; but I believe it was occaſioned by a Lee-Roll.

Q. How was it afterwards?

A. They afterwards went Home, though not in Point-blank; but in a Curve.

Q. Was you ever within Point-blank?

A. If ever we were within Point-blank, it was when we engaged the ſternmoſt Ship of the Enemy, the *Santa Iſabella*; and I believe we might then; for the Shot that came in upon the Quarter-deck went through; and that made me think we were within Point-blank.

Q. How many Cables Length was you then from the *Iſabella?*

A. I believe we were then about Half a Mile from her.

Q. You ſay, When you run under the *Royal Oak*'s Stern, ſhe was to Windward of the Line: Can you recollect, that ſhe was farther to Leeward, either before or after that Time?

A. I believe, before we run under the *Royal Oak*'s Stern, ſhe had been a little more to Leeward, than ſhe was when we run under her Stern; and I think ſhe had hauled up a little, before we run under her Stern: But the thing is of ſo long ſtanding, that I can't well remember.

Q. Do you think ſhe was ever ſo far to Leeward as you was, when you run under her Stern?

A. No; ſhe had been but very little more to Leeward than ſhe was then.

Q. Was ſhe ever within Point-blank of the Enemy?

A. No.

Q. How near was ſhe to the Enemy?

A. Within a Mile.

Q. How near was you to the Enemy?

A. Within Three-quarters of a Mile.

Q. Was the *Royal Oak* near enough to do Execution?

A. I believe ſhe was near enough for random Shot to do Execution.

Q. When the *Dorſetſhire* bore away, and was the leewardmoſt Ship; Was it before or after the *Marlborough* loſt her Maſts?

A. After the *Marlborough* loſt her Maſts.

Q. How long after the *Marlborough* loſt her Maſts, Did the *Dorſetſhire* bear away?

A. About a Quarter of an Hour; and till then the *Royal Oak* was the Leewardmoſt of the Four Ships.

Priſoner aſked,

Q. Do you remember Admiral *Leſtock*'s firing a Shot at the *Dunkirk?*

A. Yes.

Court asked,

Q. What Time of the Day was that?

A. About Two o'Clock: I can't juſtly ſay.

Q. Were the Four ſternmoſt Ships of the Enemy ahead or aſtern of the *Cambridge*, when that Shot was fired?

A. I reckon they were then under our Starboard-Quarter, coming up with an eaſy Sail.

Q. What

Q. What was the Deſign of that Shot?

A. I believe, to make the *Dunkirk* keep the Line; becauſe ſhe had broke out of it.

Q. Was it fired at you, or the *Dunkirk?*

A. It could not be at us; for we were then in a direct Line ahead with Mr. *Leſtock*; but the *Dunkirk* broke out of the Line to Windward.

Q. Did you not make Sail, after That?

A. We let fall our Foreſail, which had been hauled up, to keep Company with the Vice-Admiral, becauſe the *Torbay* was not in her Station: And Captain *Drummond* kept near to the Vice-Admiral; for, if he had not, there would have been nobody to have aſſiſted him.

Q. What Ships were there aſtern, to make the Vice-Admiral in any Danger?

A. I thought they would have bore down upon the Four ſternmoſt Ships of the Enemy.

Q. Did the *Dunkirk* break out to Windward of the Line?

A. Yes.

Q. Was you to Windward of the *Namur* then?

A. Yes.

Q. After you came up, How long was it before the Admiral hauled down the Signal for Engaging?

A. I don't remember the Signal's being hauled down at that time: It might be afterwards hauled down towards the Evening, when the Admiral wore.

Q. How long, after you run under the *Royal Oak*'s Stern, was it, that the Admiral wore?

A. I believe, about an Hour and an Half; for we were engaged Three-quarters of an Hour after we ran under her Stern: But I can't exactly tell the Time.

Q. Have you never a Log-Book, or a Journal?

A. No; I loſt them when the *Pembroke* overſet.

Priſoner asked,

Q. Did you not obſerve me to be nearer to thoſe Ships, before you came up? And did you not fire at the ſternmoſt Ship?

A. We fired at them all; and took them as they came long.

Priſoner. He has ſworn poſitively to a great many things, which, I believe, will be proved otherwiſe.

Then the Witneſs withdrew.

Lieutenant *Scrope*, of the *Neptune*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 64.): And he declared the ſame to be true.

Q. You ſay, The *Royal Oak* did not bear down in a Line with the Admiral?

A. I ſaw no Ship bear down, but the *Marlborough.*

Q. Could the *Royal Oak* have engaged the *Hercules?*

A. Yes, I think ſo: She was to Windward, and might have bore down to the *Hercules*, if ſhe would.

Q. Might the *Royal Oak* have aſſiſted the *Marlborough?*

A. She might have gone down, as ſhe was to Windward.

Q. Did you ever ſee the *Royal Oak*, during the Engagement, engage any of the *Spaniſh* Men of War?

A. I ſaw Firing from ſeveral Ships ahead of us, and ſaw Shot fall ſhort; but I can't ſay, from the *Royal Oak* in particular.

Q. So you know nothing of her?

A. My Situation would not allow it; for I was quartered upon the Lower-Gun-deck.

Q. Could you ſee, which was the leeward-moſt Ship of the Four?

A. No; I did not obſerve; for I went down to my Quarters ſoon after the Engagement began.

Q. As you was not in Action, you might be upon Deck ſometimes.

A. Yes; I went now-and-then upon Deck; but did not take notice of the *Royal Oak*, or any Ship in particular.

Q. Did you fire a Broadſide upon the Enemy?

A. Yes; I was then at my Quarters.

Q. Did you take notice of the *Cambridge* in the Action?

A. Yes.

Q. Did you ſee her engage?

A. I can't ſay: I ſaw Firing from the Ships ahead.

Q. Did you ſee nothing of a Shot fired from the *Neptune* at ſome of the Ships?

A. Yes; it was fired at the *Dunkirk.*

Q. What Situation was the *Royal Oak* in?

A. I did not ſee any thing of the *Royal Oak* in particular.

Q. You ſpeak in your Depoſition of the *Royal Oak.*

A. I ſpeak of thoſe Four Ships in general.

Q. Can you recollect the Time of the Day, when you was upon Deck?

A. No; I cannot ſay the Time.

Q. Was it in the Afternoon?

A. Yes; it was in the Afternoon.

Q. Did you look at the Admiral ahead, when you went upon Deck?

A. Yes.

Q. How did ſhe ſeem to be, with reſpect to your Ship?

A. She was right ahead.

Q. What time was that?

A. That was when Admiral *Mathews* firſt began to engage.

Q. Did you then obſerve the Situation of the Four Ships aſtern of the *Marlborough?*

A. Thoſe Four Ships were then all to Windward of the Admiral.

Q. How much were they upon your Bow?

A. It is quite a Gueſs: I cannot tell.

Court.

Court. He knows nothing of it.

Witneſs. I could not poſſibly know it, from my Situation.

Q. How often was you upon Deck?

A. I believe, I might be twice upon Deck in the Afternoon, and not above Two Minutes at a time: But, at both times, thoſe Ships were to Windward of the Admiral.

Priſoner aſked,

Q. Do you know where the *Cambridge* was, at the time the Shot was fired at the *Dunkirk?*

A. I can't tell: I was then at my Quarters below.

Lieutenant *Lempriere*, of the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 65.): And he declared the ſame to be true.

Q. You ſay, You ſaw thoſe Four Ships to Windward?

A. Yes; when the Engagement began.

Q. Were they then in the Line?

A. They were then bearing down; and I then went down to my Quarters.

Q. Where was you quartered?

A. Upon the Lower-Gun-deck.

Q. Do you know, that thoſe Ships did come down then?

Q. I don't know; for I did not come upon Deck, till the Signal was made to leave off Chace.

Q. Do you know any thing of the Fireſhip?

A. I did not come upon Deck, till the Fireſhip was deſtroyed.

Q. Did you ſee the *Marlborough*'s Maſts go?

A. No: I ſaw the *Marlborough*'s Maſts were gone.

Q. Did none of thoſe windwardmoſt Ships come down to the Aſſiſtance of the *Marlborough?*

A. I can't tell: I obſerved no Ship, till I ſaw the Fireſhip was blown up.

Q. Do you know any thing particularly of the *Royal Oak?*

A. No; I don't know any thing of her.

Then he withdrew.

Captain *Stepney*, of the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 63.): And he declared the ſame to be true.

Q. You ſay, The *Royal Oak* might have aſſiſted the *Marlborough*, if ſhe had bore down?

A. Yes, ſhe might; but not without going ahead of the other Ships.

Q. Was ſhe in her Station?

A. She was rather to Windward.

Q. Could ſhe have aſſiſted the *Marlborough*, and engaged the *Hercules?*

A. She could not, without going ahead of the Ships between her and the *Marlborough.*

Q. Was there Wind ſufficient? And could ſhe have gone ahead?

A. Yes; ſhe might have gone ahead, and engaged the *Hercules*: But there was but little Wind, and it would have required ſome time to have done it; for we could not go above a Mile an Hour.

Q. If all the Four Ships, aſtern of the *Marlborough*, had bore down equally with the *Namur* and *Marlborough*, Would there, in that Caſe, have been any Ship for the *Royal Oak* to have engaged?

A. No.

Q. Then how could ſhe have engaged the *Hercules?*

A. By going ahead of thoſe Ships.

Q. Was the *Royal Oak* in a Line with the *Marlborough*, at any time, from the Beginning of the Engagement, till after the Admiral wore?

A. None of the Four ſternmoſt Ships of the Centre Diviſion bore down equally with the *Marlborough*, but were all to Windward of her the Firſt Part of the Engagement; but, as to the latter Part, I can't ſay.

Q. Which of thoſe Four Ships was the leewardmoſt?

A. The *Royal Oak* ſeemed to me to be neareſt engaged with the Enemy; and to be the leewardmoſt Ship of the Four, till after the *Dorſetſhire* bore down; and then the *Dorſetſhire* was the neareſt.

Q. What Ship did the *Royal Oak* engage?

A. The Second or Third of the *Spaniſh* Ships coming up.

Q. How near was ſhe engaged?

A. I can't undertake to ſay.

Q. Did you ſee any of her Shot?

A. No; I ſaw none of their Shot.

Q. Then you can't ſay, Whether ſhe was within Point-blank, or not?

A. I had but a ſhort and diſtant View; and a general View of the Action.

Q. What Time did the *Royal Oak* begin to engage?

A. I believe, About Two o'Clock.

Q. You ſay, in your Depoſition, That the *Royal Oak* did not bear down to the Relief of the *Marlborough*, as ſhe might have down: Do you think, that, in the Situation ſhe was in, ſhe ought to have bore down, and engaged the *Hercules?*

A. I can't ſay, That ſhe could have bore down, without breaking her Station.

Q. When the *Marlborough* loſt her Maſts, Which was the leewardmoſt Ship, the *Dorſetſhire*, or the *Royal Oak?*

A. I think, the *Royal Oak.*

Q. Which was neareſt to the *Marlborough?*

A. The *Dorſetſhire.*

Q. Did you obſerve the *Marlborough*, when ſhe loſt her Maſts?

A. I

A. I ſaw her Maſts fall overboard.

Q. Did you obſerve the *Namur* then?

A. Yes.

Q. How was ſhe, with reſpect to your Ship?

A. She was upon our Weather-Bow: She was then hauled off.

Q. Did you obſerve the *Royal Oak*, or any of thoſe Ships aſtern of the *Marlborough*, at that time?

A. I did not particularly obſerve either of them then.

Q. Which of the Four was the Leeward-moſt?

A. I think the *Royal Oak* was the Leeward-moſt.

Q. Were they then in a Line with the *Namur*, or *Marlborough*?

A. They were not ſo far to Leeward as the *Marlborough*; but, I believe, they might be as far to Leeward as the *Namur*, who was then hauled off.

Q. Did you obſerve the *Royal Oak*, after ſhe bore away, luff up again?

A. No.

Q. What Time of the Day was it, when you ſaw the *Royal Oak* cloſeſt engaged?

A. About Two o'Clock, or Half an Hour after Two.

Q. At what Diſtance did ſhe and the Enemy engage?

A. I believe, about Half a Mile; but I can't ſpeak with any Certainty.

Q. Was ſhe to Windward, or to Leeward, of you?

A. I ſaw her juſt upon our Weather-Bow.

Q. What Diſtance was you from the Body of the Four *Spaniſh* Ships coming up?

A. I believe, about Four Miles, at Two o'Clock.

Q. Was the Second or Third Ship, which the *Royal Oak* engaged, in a Line with their Admiral?

A. They were all in a good Line with one another, and going down to cloſe with their Admiral; and were in a Line with their Admiral.

Q. Were they abreaſt, or ahead, of you?

A. They were ahead of us.

Q. If you had been abreaſt of them, How far ſhould you have been from them at that time?

A. Between Two and Three Miles.

Q. Were you and the *Royal Oak* in the ſame Courſe?

A. No; the *Royal Oak* was cloſer to the Wind than we were; our Courſe was for the *Marlborough*.

Q. Did any Ship go to the Aſſiſtance of Captain *Williams*, while he was engaged?

A. The next Ship to him was the *Rupert*; and ſhe was to Windward of him.

Q. What Diſtance was you then from the *Royal Oak*?

A. About Two Miles.

Q. Do you remember the *Cambridge*'s running between the *Royal Oak* and the Enemy?

A. No; I did not ſee her then: There might be ſeveral things happened, that I could not ſee.

Q. Did you ſee the *Cambridge* engaged?

A. Yes.

Q. Did ſhe engage to Windward or to Leeward of the *Royal Oak*?

A. I can't ſay.

Q. Where was the *Royal Oak*, when the *Cambridge* engaged?

A. The *Cambridge* was not engaged, at the firſt time of Captain *Williams*'s Engaging.

Q. What Time was the Shot fired by you?

A. Between Three and Four o'Clock.

Q. At what Ship?

A. At the *Dunkirk*.

Q. For what Reaſon?

A. Becauſe ſhe was to Windward of the Line, and Two Miles diſtant from the Vice-Admiral.

Priſoner asked,

Q. I want to know, at what Time that Shot was fired at the *Dunkirk*?

A. Between Three and Four o'Clock.

Priſoner. I think the Maſter of the *Cambridge* ſaid, It was fired about Two o'Clock.

Witneſs. I am very poſitive to the Time; it was between Three and Four o'Clock; for it is a very material Thing, and I am very poſitive it was paſt Three, when that Shot was fired; and it was fired as a Check to thoſe Two Ships, who were ahead, and to Windward of their Stations.

Q. How long was it, after that Shot was fired at the *Dunkirk* and *Cambridge*, before the *Cambridge* began to engage the *Spaniſh* Ships?

A. I can't be particular, but it was ſome time after that Shot was fired; and about Four o'Clock we diſcharged a Broadſide at the ſternmoſt Ship of the Enemy.

Q. Where was the *Cambridge* then?

A. The *Cambridge*, when that Shot was fired, was to Windward, and had not engaged.

Priſoner. The Maſter of the *Cambridge* ſays, It was an Hour and an Half before, that the *Cambridge* came under the *Royal Oak*'s Quarter, and was engaged Three-quarters of an Hour, and lay by Three-quarters of an Hour.

The Court told the Priſoner, That they did not hinder him from aſking any Queſtions; but that he ſhould not tell one Witneſs, what another ſaid.

Then the Witneſs withdrew.

Lieutenant *Ericks*, of the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 66.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Middle-Gun-deck.

Q. You ſay in your Depoſition, That none of thoſe Four Ships to Windward bore down to aſſiſt the *Marlborough*, when ſhe was in Diſtreſs?

A. No; I did not ſee any of them do ſo.

Q. Were thoſe Four Ships in a Line, when the Engagement began?

A. I ſaw them to Windward, before I went off the Quarter-deck to my Quarters.

Q. Did you ſee them afterwards?

A. No; not till the Engagement was over.

Q. What Time did you go down to your Quarters?

A. As ſoon as the Engagement began.

Q. Did you never look out of the Ports?

A. Yes; I was in the Larboard-Entering-port, when the Fireſhip blew up; for then ſome of the People crying out, The *Real* was on Fire, I looked out of the Entering-port, and ſaw it was the Fireſhip.

Q. Where were the Four Fireſhips aſtern of the *Marlborough* then?

A. They appeared to be in the ſame Poſition as before I went off the Deck.

Q. What Poſition was that?

A. When I went off the Deck, they were not in a Line with the *Marlborough* and Admiral, but to Windward; and, when I ſaw them out of the Entering-port, they were to Windward both of the *Namur* and the *Marlborough*.

Q. Are you ſure of it?

A. Yes; I am poſitive of it.

Q. What were they then doing? Did they bear down?

A. They were under Sail; but I did not obſerve, that they were bearing down.

Q. What were the *Namur* and *Marlborough* then doing?

A. I believe, the *Marlborough* was then firing at the *Real*: I did not ſee the *Namur* firing.

Q. Was this at the time the Fireſhip blew up, that the *Marlborough* was firing at the *Real?*

A. It was much about that time.

Q. Did you ſee the *Royal Oak* fire?

A. No.

Q. Did you ſee the *Marlborough* loſe her Maſts?

A. No.

Q. Did you ſee her, after ſhe loſt her Maſts?

A. Not till after the Engagement was over.

Q. How do you know, then, that ſhe was not aſſiſted?

No Anſwer.

Q. What time was it that you looked out of the Entering-port?

A. About Four o'Clock.

Q. Were the *Marlborough*'s Maſts gone then?

A. I believe, they were.

Q. What did you ſee, when you looked out of the Entering-port?

A. I ſaw the Fireſhip blow up; that was all I ſaw.

Q. Did you not ſay, that you ſaw the *Marlborough* and *Namur*, and the Four Ships to Windward of them?

A. I can't ſay, that I ſaw any thing but the Fireſhip's Blowing up.

Q. Do you not ſay, that you ſaw them all Four; and that they were to Windward of the *Namur* at the time you went into the Entering-port, upon the Alarm of the *Real*'s being on Fire?

A. Yes, I did ſee them.

Q. In what Poſition did you obſerve the *Namur* and *Marlborough* then?

A. Upon our Larboard-Quarter.

Q. Did you obſerve the Four Ships at that time?

A. No; I can't ſay, that I did obſerve them.

Then he withdrew.

Lieutenant *Pearſe*, of the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 66.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. When the Admiral began to engage, Where were thoſe Four Ships? Were they to Windward of the Line?

A. They were to Windward of the *Namur*.

Q. Did you ſee the *Royal Oak* bear down, to aſſiſt the *Marlborough?*

A. I ſaw her fire ſeveral Guns; but I don't know at what Ship: I ſaw all thoſe Ships fire.

Q. Was ſhe ever ſo far to Leeward as the *Marlborough?*

A. No; I believe, ſhe never was.

Q. I think you ſay, Any of thoſe Four Ships might have aſſiſted the *Marlborough?*

A. Yes, they might, if they had made Sail ahead.

Q. Which of thoſe Four Ships, do you think, was the Leewardmoſt?

A. The *Royal Oak*, I think.

Q. Did you ſee the *Royal Oak* engage?

A. I ſaw her fire.

Q. At what o'Clock?

A. I can't ſay.

Q. Do you imagine the *Royal Oak* was within point-blank Shot, when ſhe engaged?

A. I can't juſtly ſay; I could not be a Judge at ſuch a Diſtance.

Q. How far was you from the *Royal Oak*, when Mr. *Mathews* began to engage?

A. About Two or Three Miles.

Q. When the *Spaniſh* Ships came up, Did you ſee any of thoſe Ships engage them?

A. I ſaw all the Four fire; but I ſaw the Shot fall ſhort Half-way.

Q. What! from the *Royal Oak?*

A. I can't ſay from what Ships; for I ſaw them all fire together; I can't ſay, from what Ship the Shot fell ſhort.

Q. At that time, Did any of your Diviſion engage?

A. No; I believe there were none of our

Diviſion engaged then; but I can't be certain: I can't tell.

Q. Did the *Cambridge* fire?

A. The *Cambridge* was ahead, and to Windward; and fired ſeveral Shot.

Q. Did you ever obſerve the *Cambridge* to engage at all?

A. I believe ſhe fired ſome Shot.

Q. Did you obſerve where the *Royal Oak* was then?

A. I can't ſay, that I did.

Q. Did you take notice, that the *Cambridge* bore down to Leeward of the *Royal Oak*, and engaged the Enemy?

A. No; I never obſerved, that ſhe did ſo.

Priſoner asked,

Q. At what time was the Shot fired at the *Dunkirk* and *Cambridge?*

A. At Half an Hour after Three, by our Watch, a Shot was fired at the *Dunkirk*, who was out of her Line to Windward.

Q. Where was the *Cambridge* then?

A. The *Cambridge* was then ahead, and to Windward.

Q. How far?

A. About Three-quarters of a Mile.

Court asked,

Q. When you ſaw the *Royal Oak* engaged with any of the Enemy's Ships, Was the *Neptune* then abreaſt of any of thoſe Ships?

A. I can't ſay; but when Mr. *Leſtock* fired a Broadſide at the ſternmoſt *Spaniſh* Ship, ſhe was then before our Beam.

Q. What Ship did Captain *Williams* engage?

A. I don't know which of the Four Ships.

Q. When the *Royal Oak* was engaged with one of the *Spaniſh* Ships, Were all thoſe *Spaniſh* Ships then in a good Line?

A. Yes; they were in a pretty good Line; but not quite cloſed.

Q. At that time, What Diſtance was the *Neptune* from the ſternmoſt Ship, which ſhe fired at?

A. The Enemy's Shot did not reach us, nor ours them, as I ſuppoſe,

Q. At that time, How did you obſerve the *Royal Oak*, with reſpect to your Ship?

A. She was then neareſt right-ahead.

Q. At what Diſtance?

A. I can't tell.

Q. Did the *Spaniſh* Ships go as you did? Did they haul up more, or edge away larger?

A. They ſteered for the *Real*:—They hauled up more to the Wind than we were.

Q. Were the Four *Spaniſh* Ships before or abaft your Beam?

A. Before our Beam.

Q. What Diſtance was you from them?

A. I cannot tell.

Q. Did they fire any Shot at you?

A. Yes; but none of them reached us.

Q. What Ship did you fire at?

A. At the *Iſabella*.

Q. At what Diſtance was you from the *Royal Oak*, when you fired a Broadſide?

A. I can't tell.

Q. When you obſerved the *Royal Oak* right ahead of you, where was the Admiral then?

A. I did not obſerve; for we were then buſy, being juſt firing.

Q. Did you ſee the *Royal Oak* very plain?

A. Sometimes; when I looked out.

Q. What Diſtance was you then from her?

A. I don't know.

Priſoner asked,

Q. What time did the *Cambridge* begin to fire at the Enemy?

A. I think it was after the Shot was fired at the *Dunkirk*.

Court asked,

Q. What did they do, upon firing that Shot?

A. They edged away to Leeward.

Q. Did they go to Leeward of the Line of your Diviſion?

A. No: The *Cambridge* edged away down into a Line, near right ahead of the Vice-Admiral: The *Dunkirk* did not edge away ſo far.

Q. Where was the *Dunkirk*'s Station?

A. Next ahead of the *Cambridge*.

Then he withdrew.

Iſaac Chapman, Maſter of the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 67.): And he declared the ſame to be true.

Q. When the *Namur* began to engage, Where were the Four Ships aſtern of the *Marlborough?*

A. I apprehend, thoſe Ships ſteered for the *Marlborough*; and, in ſteering for her, were nearing the Enemy.

Q. Where was the *Royal Oak*, when the *Namur* began to engage?

A. She was to Leeward of the Ships aſtern of the *Marlborough:* She was the Leewardmoſt of the Four Ships.

Q. Was the *Royal Oak* in a Line with the Admiral?

A. When the Admiral began to engage, ſhe was not in a Line with him.

Q. Did you ever ſee her in a Line with the Admiral afterwards?

A. No; I did not ſee her in a Line with him afterwards.

Q. Did the *Royal Oak* aſſiſt the *Marlborough?*

A. I can't ſay, that ſhe ever did.

Q. Did you ſee her engaged with any of the *Spaniſh* Ships?

A. Yes; I ſaw her engaged with ſome of the Four Sail; and ſaw ſome of their Shot go over her.

Q. What Diſtance was ſhe from them?

A. Within Half random Shot.

Q. Was ſhe within Point-blank?

A. I believe not.

Q. You ſay, You ſaw ſome of the Enemy's Shot go over her?

A. Yes, a conſiderable Way.

Q. What Ship did you ſee her engage with?

A. I

A. I believe ſhe was engaged with the Firſt and Second of the *Spaniſh* Ships, or both; they both fired at her; I am almoſt ſure of it.

Q. You ſay the *Royal Oak* was the Leeward-moſt of the Four Ships?

A. Yes.

Q. Did you ever ſee her haul up, to go to the *Rupert*, during the Engagement?

A. No; I did not obſerve her to do ſo; on the contrary, I ſaw her inclined to edge nearer to the Enemy.

Q. Did you ever obſerve the *Cambridge* go in between the *Royal Oak* and the Enemy, and engage?

A. No, I never did; and I was upon the Deck all the time.

Q. Did you ever ſee the *Cambridge* engage the Enemy?

A. I ſaw her fire; but ſhe was not then ſo far to Leeward as the *Royal Oak* was: It was at the time we fired a Shot at the *Dunkirk*; about Half an Hour after Three.

Q. How did the *Cambridge* bear from the *Neptune* at that time?

A. She was a little upon our Larboard-Bow.

Q. Did you never ſee the *Cambridge* farther to Leeward than the *Neptune*?

A. No, I never did; I can't ſay, that I did.

Priſoner asked,

Q. Do you remember what Sail the *Royal Oak* had, when ſhe firſt bore down?

A. I think ſhe had her Top-gallant-ſails and Foreſail; and was edging down more to Leeward than the other Three Ships.

Court asked,

Q. You ſay, The *Royal Oak* was the Leeward-moſt of the Four; and all of them bore down, at firſt?

A. They all edged down; and the *Royal Oak* more to Leeward than the others, nearing the Enemy all the while.

Priſoner asked,

Q. Do you remember whether the *Royal Oak* bore away as ſoon as the *Rupert* did?

A. I did not obſerve, that any of them bore away; but, in edging down, the *Royal Oak* was moſt to Leeward.

Court asked,

Q. What Sail had the Four *Spaniſh* Ships ſet?

A. The Three Headmoſt had their Top-gallant-ſails, Stayſails, and Foreſails ſet; and the *Iſabella* had her Top-gallant-ſails lowered, and her Foreſail up; and they continued ſo, till the *Neptune* fired at her; and then ſhe bore away to Leeward.

Q. Did all the reſt bear away?

A. Yes; but not ſo much as ſhe did: They did not bear away directly upon our Firing.

Q. Where was the *Royal Oak*, at the time of the *Neptune*'s Firing, about Four o' Clock?

A. She was juſt open with our Larboard or Weather-Cat-head.

Q. Was the *Royal Oak* in a Line with you, when ſhe engaged the Enemy?

A. Yes; before we edged away nearer.

Q. Could the *Spaniſh* Ships have weathered the *Royal Oak?*

A. I apprehend they could, towards the Evening, when the Wind ſhifted more Northerly.

Q. How far was the *Royal Oak* ahead of you towards the Evening, before you wore?

A. I believe, a Mile, or thereabouts, as near as I can judge.

Q. At what time?

A. At the Time of leaving off Chace.

Q. What Time of the Day was that?

A. About Half an Hour after Five.

Then he withdrew.

Edward Pike, late Maſter's Mate of the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 68.): And he declared the ſame to be true.

Q. You ſay, the *Royal Oak* was never within Point-blank Shot of the Enemy?

A. Never, to my Knowlege, till after the Admiral wore in the Evening.

Q. Did you ever ſee her engage?

A. Yes; about the time of the Fireſhip's bearing down; when, I think, Two or Three of the Enemy's ſternmoſt Ships fired at her, and ſhe returned it.

Q. Did you ever ſee the *Cambridge* run in between the *Royal Oak* and the Enemy, and engage?

A. No, I never did.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. Did the *Royal Oak* give the *Marlborough* any Aſſiſtance?

A. No.

Q. When you ſaw the *Royal Oak* fire, was ſhe in a Line with the Admiral?

A. With the Admiral?—I don't know but ſhe might; for the Admiral was then hauled off, and conſiderably to Windward of the *Marlborough*.

Q. Did the Admiral only ſhoot ahead, or haul off?

A. He hauled off to Windward.

Q. At what time did the Admiral haul off?

A. When I obſerved the Admiral hauled off, it was about Half an Hour, or, at moſt, Three-quarters of an Hour, after he began to engage.

Q. Was the *Royal Oak* ever in a Line with the *Marlborough?*

A. No.

Q. How long was the *Royal Oak* engaged with the Enemy?

A. The *Spaniſh* Ships, after they had paſſed the *Neptune*, in going down to cloſe with the *Real*, fired at the *Royal Oak*, and the other Ships aſtern of the *Marlborough*, and they returned the Fire: But they were at too great a Diſtance; for I ſaw the Shot make a Breach in the Sea, between the Two Lines.

Q. Was

Q. Was it after the *Marlborough*'s Maſts were gone?

A. Yes; it was when the Fireſhip bore down.

Then he withdrew.

Lieutenant *James Munro*, late Maſter's Mate on board the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 69.): And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Braces.

Q. Did you ever ſee the *Royal Oak* within point-blank Shot of the Enemy?

A. No.

Q. Did you ever ſee her fire at all?

A. Yes.

Q. At what Time?

A. I can't be poſitive as to the Time; but it was after the *Marlborough* was diſmaſted.

Q. Did ſhe ever go to the Aſſiſtance of the *Marlborough?*

A. No; not that I ſaw.

Q. Did you ever ſee any Ship run in between her and the Enemy?

A. No.

Q. Did you ſee the *Cambridge* engage the Enemy?

A. She might; but I did not obſerve her fire.

Q. How far was ſhe ahead of you?

A. About Three Quarters of a Mile.

Q. How did the *Royal Oak* bear from you, when ſhe fired?

A. I ſaw her upon our Larboard-Bow.

Q. How did ſhe then lie, with regard to the Admiral?

A. I can't tell.

Q. Was ſhe within Gun-ſhot of the Enemy?

A. She was not ſo near as a Ship ſhould properly be, to engage.

Q. Was ſhe within Half a Mile?

A. I don't believe ſhe was within Half a Mile.

Q. Was ſhe within a Mile?

A. I can't ſay, as to a Mile; but ſhe was not within Half a Mile.

Q. Was ſhe within point-blank Shot?

A. I don't believe ſhe was.

Then he withdrew.

Charles Stuart, late Midſhipman on board the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 70.): And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Braces.

Q. Do you believe the *Royal Oak* was never within Point-blank of the Enemy?

A. She was not at the firſt of the Action; but I can't ſay what ſhe may be towards the Evening, becauſe I was ordered down between Decks; but at firſt thoſe Ships were to Windward.

Q. Was ſhe out of the Line?

A. She was out of the Line with the *Marlborough:* I obſerved the Four Ships aſtern of the *Marlborough* were to Windward of her; but I can't ſay how they were as to the *Namur*. That was in the firſt Part of the Action; I did not ſee what was done in the latter Part of it.

Q. What do you call the latter Part of the Action?

A. After Four o'Clock.

Q. What time did you wear?

A. About Five o'Clock: I can't ſay exactly.

Q. Did you ſee any of thoſe Four Ships aſtern fire at the Enemy?

A. I ſaw them all fire.

Q. Were they within Point-blank?

A. They were not within Point-blank, when I ſaw them, which was at the firſt of the Action.

Q. Did you ſee the *Cambridge* go down between the *Royal Oak* and the Enemy, during any Part of the Engagement?

A. No.

Q. When you firſt obſerved the *Royal Oak*, was ſhe bearing down, or did ſhe keep to Windward?

A. I did not obſerve, that ſhe was bearing down.

Q. How was the Wind then?

A. Much about upon our Beam.

Q. Did you ſee the *Cambridge* fire at the Enemy?

A. No; I never ſaw her fire.

Q. Did you obſerve which was the Leewardmoſt of the Four Ships aſtern of the *Marlborough?*

A. No; I did not obſerve.

Q. Did you obſerve the *Royal Oak* bear down to the Enemy, or haul up from them?

A. I can't ſay, that I ever did.

Q. When you ſaw the *Royal Oak*, What Sail had ſhe ſet?

A. I don't know: I did not take ſuch particular Notice of her, as to obſerve what Sail ſhe had.

Q. Did you ever take any particular Notice of the *Royal Oak?*

A. Not above any of the reſt of the Ships.

Q. Was ſhe the Leewardmoſt of the Four Ships?

A. I did not obſerve, whether ſhe was or not.

Then he withdrew.

Andrew Cooke, Midſhipman on board the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 71.): And he declared the ſame to be true.

Q. Where was you quartered?

 A. At

A. At the Fifth Gun, upon the Upper-deck.

Q. You ſay, The *Royal Oak* never was within point-blank Shot of the Enemy?

A. I can't ſay, that I ever ſaw her within Point-blank.

Q. Did you ſee her fire?

A. Yes; and I ſaw the Shot fall ſhort.

Q. Did you ſee her fire all the time?

A. No; when I ſaw her fire, it was between Four and Five o'Clock, about the time the Fireſhip was bearing down, and before ſhe blew up.

Q. What Ship was ſhe then firing at?

A. At the Headmoſt of the *Spaniſh* Ships, coming up.

Q. Did you ſee the *Marlborough*, when her Maſts were loſt?

A. I ſaw her ſoon after her Maſts were gone.

Q. Did you ſee the *Royal Oak* give her any Aſſiſtance?

A. No.

Q. Was the *Royal Oak* in a Line with the *Namur*, or *Marlborough*?

A. I can't ſay ſhe was, or was not, in a Line with either.

Q. Was ſhe in a Line with the *Namur*?

A. I believe ſhe might, the *Namur* being then hauled off; but ſhe was not in a Line with the *Marlborough*.

Q. Was ſhe within Gun-ſhot?

A. I ſaw the Shot fall ſhort.

Q. How did the *Namur* and *Marlborough* bear from you?

A. Upon our Larboard-Bow.

Q. Was the *Neptune* in a Line with the *Marlborough*?

A. The *Marlborough* was upon her Larboard-Bow.

Q. If your Ship and the *Marlborough* had been ſteering upon the ſame Point of the Compaſs, Should you then have been in a Line with the *Marlborough*?

A. I can't tell; I don't know as to that.

Q. Was the *Royal Oak* to Windward of the *Marlborough*?

A. Yes.

Q. Was the *Neptune* to Windward of the *Marlborough*?

A. No; I think not.

Q. If you had hauled your Wind, Would you then have been to Windward of the *Marlborough*?

A. Yes.

Q. Did you ſee the *Cambridge* between the *Royal Oak* and the Enemy?

A. No.

Q. Did you obſerve the *Cambridge* engage at all?

A. Yes, I ſaw her fire; and then I think ſhe and the *Royal Oak* were in a Line.

Q. What time was it you ſaw her fire?

A. Between Four and Five o'Clock.

Q. What Diſtance was the *Cambridge* from the Enemy, when ſhe fired?

A. I can't ſay the Diſtance; but her Shot fell ſhort.

Q. How long did ſhe engage?

A. I can't tell.

Q. Did you obſerve, whether any Shot of the *Royal Oak* reached the Enemy?

A. I can't ſay; but I ſaw ſeveral, both of her Shot and the Enemy's, fall ſhort.

Q. Did you ſee any of Enemy's Shot go over the *Royal Oak*?

A. No, I did not.

Q. Do you apprehend, that the *Royal Oak* had any Ship of the Enemy to engage with, before ſhe did engage?

A. There was a large Opening between the *Hercules* and the Four ſternmoſt Ships of the *Spaniards*; and I apprehend the *Royal Oak* lay within that Opening.

Q. Did you obſerve, which of our Four Ships aſtern of the *Marlborough* was moſt to Leeward?

A. I believe, if any, the *Royal Oak* was: The *Eſſex* and *Rupert* were to Windward of her.

Q. At what time?

A. Whenever I obſerved her in the Afternoon.

Q. Did you obſerve the *Royal Oak*, any Part of the Day, haul up towards the *Rupert*, to ſpeak to her?

A. No; I did not obſerve it.

Then he withdrew.

Lieutenant *Clarke*, late a Midſhipman on board the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 71.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Quarter-deck, to paſs the Word.

Q. I think you ſay, The *Royal Oak* never gave any Aſſiſtance to the *Marlborough*?

A. No; I never ſaw it.

Q. Was the *Royal Oak* ever within Point-blank, when ſhe engaged?

A. I never ſaw her within Point-blank.

Q. Did you ſee her engage, out of Point-blank?

A. Yes, I ſaw all the Ships aſtern of the *Marlborough*; and I obſerved moſt of their Shot to fall ſhort: Their Shot in general fell ſhort.

Q. Did you particularly diſtinguiſh the *Royal Oak*'s Shot fall ſhort?

A. No, not particularly from the reſt; I ſaw moſt of the Shot from all thoſe Ships fall ſhort.

Q. Did you obſerve the *Royal Oak* all the time ſhe was engaged?

A. I cannot ſay all the while; I ſaw her ſometimes.

Q. Did you ſee any Shot fly over her?

A. I did not obſerve any fly over her.

Q. What Ship was the Leewardmoſt of thoſe Four Ships?

A. The *Royal Oak.*

Q. How far was ſhe to Leeward of the other Ships?

A. I cannot ſay.

Q. Was ſhe ever in a Line with the Admiral?

A. She might be in a Line with the Admiral, after he was hauled off.

Q. Was ſhe ever in a Line with the *Marlborough?*

A. I never ſaw her in a Line with the *Marlborough:* I can't ſay how ſhe might be at Night.

Q. Did you ever ſee the *Cambridge* to Leeward of the *Royal Oak?*

A. About Three or Four o'Clock, I ſaw her to the Weſtward of the *Royal Oak.*

Q. Was ſhe then nearer to the Enemy, than the *Royal Oak* was?

A. I believe ſhe was at that time: To-be-ſure ſhe was Then.

Q. Did you obſerve the *Cambridge* to fire upon the Enemy?

A. No, I did not ſee her fire; for ſhe being generally right ahead of the *Neptune*, I did not obſerve.

Q. When you ſaw the *Cambridge* to Leeward of the *Royal Oak*, Did you obſerve the Admiral at that time?

A. I can't ſay, that I obſerved the Admiral juſt at that time.

Q. You ſay, You did not ſee the *Cambridge* fire: Are you ſure, that ſhe never fired at the Enemy?

A. I can't ſay that; for I believe ſhe did fire.

Q. What time did the *Neptune* fire a Shot at the *Dunkirk?*

A. It was before Four o'Clock.

Q. As you believe the *Cambridge* did fire at the Enemy, Do you believe, that it was before or after the *Neptune* fired that Shot?

A. It is only Point of Belief; I believe it was after.

Q. Did you obſerve the *Royal Oak* to be the Leewardmoſt of the Four Ships aſtern of the *Marlborough?*

A. Yes; at the time I ſaw her, I thought ſhe was the Leewardmoſt of the Four.

Then he withdrew.

Stephen Jenkins, late a Midſhipman on board the *Neptune*, was called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 72.): And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Braces.

Q. You ſay, That any of thoſe Four Ships aſtern might have aſſiſted the *Marlborough?*

A. Yes; I believe they might.

Q. Did any of them aſſiſt her?

A. No.

Q. Did you ſee the *Royal Oak* engage the Enemy?

A. I ſaw moſt of the Ships aſtern of the *Marlborough* engage.

Q. Did you obſerve the *Royal Oak* engage?

A. I can't ſpeak particularly of the *Royal Oak*; but moſt of the Ships aſtern of the *Marlborough* engaged.

Q. Do you remember any thing of the *Royal Oak?*

A. I believe, ſhe was one of the Ships aſtern of the *Marlborough:* She was ſo, according to the written Line of Battle.

Q. Was ſhe in a Line with the Admiral, when he began to engage?

A. I believe, ſhe was not; but I did not obſerve her in particular; but, I believe, ſhe was not; becauſe I ſaw the Admiral begin to engage between the Enemy's Line and thoſe Four Ships aſtern of the *Marlborough.*

Q. Was the *Royal Oak* within Point-blank, when ſhe engaged?

A. I believe, not; for, when I ſaw the Ships aſtern of the *Marlborough* fire, I ſaw their Shot fall ſhort.

Q. Do you ſpeak of the *Royal Oak*'s Shot?

A. I don't ſpeak of her in particular.

Q. Were all thoſe Four Ships equidiſtant from the Enemy? Was no one of them nearer than the others?

A. I did not obſerve them ſo particularly, as to diſtinguiſh whether one was nearer than the others.

Q. Did you ſee the *Cambridge?*

A. She was to Windward of us; aſtern of the *Royal Oak.*

Q. Did you ſee the *Cambridge* engage the Enemy?

A. I can't ſay, that I did; ſhe might, poſſibly.

Q. Did you ſee her at any time to Leeward of the *Royal Oak?*

A. No.

Q. Did you ſee her to Leeward of the *Neptune?*

A. I can't ſay, that I did.

Q. Did you obſerve the *Cambridge* to fire?

A. I don't remember, that I ſaw her fire at all.

Then he withdrew.

John Burges, late a Midſhipman on board the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 73.): And he declared the ſame to be true.

Q. Where was you quartered?

A. In the Main-top.

Q. What do you know of the *Royal Oak*, during the Engagement?

A. I ſaw her from the Main-top-gallant Yard, about Two or Three o'Clock, engaged with the

the Third or Fourth Ship from the Rear of the *Spaniſh* Fleet: She bore down to Leeward of the *Rupert* and *Eſſex* a conſiderable Diſtance, and there engaged a conſiderable time; I believe, about Half an Hour; and then hauled up under the *Rupert*'s Lee-Quarter.

Q. How many *Spaniſh* Ships were there aſtern of the *Real*, excluſive of the *Hercules?*

A. Four I am poſitive of; I believe, there were Five.

Q. Did the *Royal Oak* engage within Point-blank?

A. No, I believe, not; I ſaw ſome Shot go over her; but moſt of the Shot, both from her and the Enemy, fell ſhort.

Q. Did you obſerve her bear down afterwards?

A. I did not obſerve her to bear down afterwards.

Q. Did you ſee the *Cambridge* go between her and the Enemy, during any Part of the Engagement?

A. No, I did not ſee her do ſo.

Q. When you obſerved the *Royal Oak* to be fartheſt to Leeward, Did you obſerve the Admiral?

A. Yes.

Q. Did ſhe then appear to be in a Line with the Admiral?

A. I can't ſay; but, I believe, after the Admiral hauled off, ſhe might be as far to the Weſtward as the Admiral.

Q. Was ſhe as far to Leeward as the *Marlborough?*

A. No; ſhe was never ſo far to the Weſtward as the *Marlborough.*

Q. Do you imagine, if the *Royal Oak* had come to cloſe Action with any of thoſe *Spaniſh* Ships, that ſhe would not have been more to Leeward than the *Marlborough?*

A. Yes, I believe ſo; becauſe the *Spaniſh* Ships were to the Weſtward of their Admiral; and, if ſhe had engaged them as cloſely as the *Marlborough* did the *Real*, ſhe muſt have been to the Weſtward of the *Marlborough.*

Q. When you ſaw the *Royal Oak* engaging ſo far to Leeward, What Diſtance might there be between her and the *Rupert?*

A. I can't pretend to ſay.

Q. Did the *Rupert* appear to be to Windward of the *Royal Oak?*

A. Yes; ſhe appeared to be conſiderably to Windward of her; but I can't tell at what Diſtance.

Q. Did ſhe haul up to the *Rupert?*

A. Yes; ſhe hauled up under the *Rupert*'s Lee-Quarter.

Q. Did ſhe ever go to Windward of the *Rupert?*

A. No, I believe, not: During the time I ſaw her, ſhe was always to Leeward of the other Three Ships.

Q. Did you ever obſerve the *Cambridge* to fire at the Enemy?

A. I think ſo; I believe, ſhe did; but I can't be certain.

Q. Did you obſerve the *Cambridge* ever nearer to the Enemy, than the *Royal Oak?*

A. Yes; when ſhe was right ahead of us, ſhe was nearer to the Enemy, than the *Royal Oak* was: They then ſteered as we did, for the *Marlborough.*

Q. Did the *Royal Oak* and *Rupert* begin to engage at the ſame time?

A. About the ſame time.

Q. Was the *Rupert* to Windward of the *Royal Oak?*

A. Yes, conſiderably.

Q. If the *Cambridge* had been Half an Hour engaged, do you think you muſt have obſerved her?

A. Yes, to be ſure; if ſhe had been ſo long engaged, I muſt have obſerved her.

Q. Did you obſerve where the *Cambridge* was, between Four and Five o'Clock?

A. I believe, ſhe was ahead of us.

Q. Was ſhe firing then?

A. I did not obſerve the *Cambridge* to fire at all.

Q. When the *Namur* and *Marlborough* bore down abreaſt, if the *Royal Oak* had bore down in her Station with the other Ships, as far to the Weſtward as the *Marlborough*, would there have been any Ship for her to engage?

A. Yes, undoubtedly there would; ſhe might have engaged the Ship aſtern of the Ship ſhe did engage with; for, by her going down to the Weſtward, before ſhe had brought to, ſhe would have fallen abreaſt of the Second of the *Spaniſh* Ships.

Q. At what o'Clock did the Sternmoſt of the Enemy's Ships come abreaſt of you?

A. I believe, about Four o'Clock; and then the ſternmoſt Ship was before our Beam.

Q. What Ship was That?

A. The *Santa Iſabella.*

Q. How long would that have been, after the Admiral began to engage, before the *Royal Oak* could have engaged?

A. I can't ſay.

Q. You ſay, She might have given Aſſiſtance to the *Marlborough?*

A. She might, if ſhe had bore down: If ſhe had ſailed on, and ſteered a proper Courſe, ſhe might have got up to her.

Q. Could ſhe not have engaged the *Hercules?*

A. Yes, to be ſure; if ſhe had made Sail ahead, and gone away Large.

Q. What time did the *Marlborough* loſe her Maſts?

A. About Three o'Clock, or a little before.

Q. Would the Wind have allowed the *Royal Oak* to have got up to the Aſſiſtance of the *Marlborough*, after the *Marlborough* had loſt her Maſts, before the *Spaniſh* Ships could have got up to the *Real?*

A. There

A. There was but little Wind; and I am doubtful of that: But if ſhe had got up to the *Marlborough*, before ſhe loſt her Maſts, I apprehend it would be giving her Aſſiſtance.

Q. What time did the Admiral wear?

A. Between Four and Five o'Clock, the Signal was made to leave off Chace.

Q. At the time the Admiral began to engage the Enemy, How did the Four *Spaniſh* Ships bear from the *Neptune?*

A. The Ship ahead of the *Santa Iſabella*, or the Second Ship from the Rear of the *Spaniards*, bore rather before our Beam; and the *Iſabella* was before our Beam, when we fired at her.

Q. Could the *Royal Oak* have engaged the *Hercules?*

A. Doubtleſs, if ſhe had made Sail towards her.

Q. Then what Ship would there have been left for the *Eſſex* and *Rupert?*

A. To be ſure, they might have engaged the *Hercules* too, if they had pleaſed; any of them might have engaged her; for any thing will go before the Wind.

Q. What Diſtance was you from the *Royal Oak*, when ſhe firſt began to engage?

A. I can't pretend to ſay.

Q. What Diſtance was the *Dunkirk* from the *Royal Oak?*

A. She was not ſo near the *Royal Oak*, as ſhe ought to have been.

Q. What Diſtance was the *Neptune* from the *Royal Oak*, when the *Royal Oak* firſt began to engage?

A. I can't judge of the Diſtance; ſhe might be about Two or Three Miles, or more.

Then he withdrew.

Lieutenant *Orrok*, late a Midſhipman on board the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 75.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Quarter-deck.

Q. Relate to the Court, what you know of the *Royal Oak*.

A. I know nothing of the *Royal Oak* in particular; I only obſerved, that all the Four Ships aſtern of the *Marlborough* were to Windward of her.

Q. Did you ſee the *Marlborough*'s Maſts go?

A. Yes.

Q. Did you ſee the *Royal Oak* near the *Marlborough* at that time, to give her Aſſiſtance?

A. No; there were Ships nearer than the *Royal Oak*.

Q. Where was the *Royal Oak* then, with reſpect to you?

A. Upon our Larboard-Bow.

Q. What Diſtance was ſhe from the *Marlborough?*

A. I can't tell.

Q. Did you ever ſee the *Royal Oak* engage?

A. I ſaw her fire.

Q. What Diſtance was ſhe from the Enemy?

A. I can't ſay.

Q. Was ſhe within Gun-ſhot?

A. I ſaw many of her Shot fall ſhort of the Enemy.

Q. Did you ſee any of the Enemy's Shot go over her?

A. No.

Q. Which of thoſe Four Ships aſtern of the *Marlborough* was the Leewardmoſt?

A. I can't ſay, becauſe my chief View was at the *Marlborough*; but I think, the *Royal Oak* was, if any.

Q. How long did ſhe continue Firing at the Enemy?

A. I can't ſay how long.

Q. What did ſhe do, when ſhe left off?

A. I don't know when ſhe left off, or whether ſhe left off, or continued Firing.

Q. Did you ſee the *Royal Oak* fire ſingly?

A. The Four Ships were Firing at the ſame time.

Q. Do you think, from the time of the *Marlborough*'s loſing her Maſts, to the time of the Action being over, that the *Royal Oak* could have got up to the Aſſiſtance of the *Marlborough?*

A. There was but very little Wind; and from the time of the *Marlborough*'s Maſts being loſt, to the time the Signal was made for giving over Chace, I do not think, that ſhe could have got up to the *Marlborough's* Aſſiſtance.

Q. Could ſhe have done it, if ſhe had gone down in time?

A. Yes, I believe ſhe might, if ſhe had gone down in time.

Q. You ſaid, She could not get to the Aſſiſtance of the *Marlborough?*

A. No, not after the *Marlborough* had loſt her Maſts.

Q. If thoſe Four Ships had bore down equally with the *Marlborough* and *Namur*, and not brought up, till they were in a Line with the *Marlborough*; Do you think they would not have been at hand to have given her Aſſiſtance, when her Maſts were carried away?

A. Yes, undoubtedly.

Q. Did the *Cambridge* ever engage to Windward, or to Leeward, of the *Royal Oak?*

A. I don't know; I never ſaw the *Cambridge* engage at all.

Q. Did you ever ſee her to Leeward of the *Royal Oak?*

A. Yes; ſhe was to Leeward of the *Royal Oak*.

Q. At what time of the Day was that?

A. Between Two and Three o'Clock.

Q. Was ſhe then nearer to the Enemy, than the *Royal Oak?*

A. Yes; to be ſure ſhe was.

Q. Do you remember a Shot being fired at the *Dunkirk* and *Cambridge?*

A. Yes; a Shot was fired at the *Dunkirk*, between Three and Four o'Clock.

Q. Then how could the *Cambridge* at that time be to Leeward of the *Royal Oak?*

A. The *Dunkirk* was at that time conſiderably to Windward of the *Cambridge*.

Then he withdrew.

Henry Madox, late a Midſhipman on board the *Neptune*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 82.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Forecaſtle.

Q. Acquaint the Court what you know of the *Royal Oak*'s Behaviour.

A. I did not ſee any thing in particular of the *Royal Oak*, more than of the other Ships that were with her.

Q. Did you ſee the *Royal Oak?*

A. I ſaw the Four Ships aſtern of the *Marlborough*; but I did not know which was which.

Q. Do you know what Station the *Royal Oak* ought to have been in?

A. The ſternmoſt Ship, aſtern of the *Rupert*.

Q. Did you obſerve her engage the Enemy?

A. I ſaw the Four Ships fire at the Enemy, and the Enemy at them; but I did not obſerve any particular Ship.

Q. Did you obſerve any one Ship nearer the Enemy than the other Three?

A. No; I did not obſerve any particular Ship.

Q. Did you ſee the *Royal Oak* go down to relieve the *Marlborough?*

A. I did not ſee any Ship go down to her Relief.

Q. Did you ſee the *Marlborough*, when ſhe loſt her Maſts?

A. Yes.

Q. And you ſaw no Ship go to her Aſſiſtance?

A. No; I did not ſee any.

Q. Could any Ship have gone down to the Relief of the *Marlborough*, and you not have ſeen her?

A. I think, if any Ship had gone down, I muſt have ſeen her.

Q. You did not ſee any Ship go down at any Part of the Day?

A. No; I did not ſee any Ship go down at any Part of the Day.

Then he withdrew.

Captain *Gaſcoigne*, of the *Torbay*, was called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 78.): And he declared the ſame to be true.

Q. What Diſtance was you from the *Royal Oak*, and the other Three Ships aſtern of the *Marlborough*, at the Beginning of the Engagement?

A. I did not ſee them; for my Ship ſailed ſo ill, as I ſaid on the former Tryal, that I was obliged to keep my Spritſail ſet; and therefore could not ſee any thing that was right ahead of me.

Q. Did you never ſee the *Royal Oak*, during the Engagement?

A. Never, to know her to be the *Royal Oak*.

Q. Did thoſe Four Ships bear down in a Line with the Admiral and *Marlborough*, when the Admiral firſt bore down to engage?

A. No; they did not bear down, when the Admiral began the Attack, ſo as to be in a Line with the Admiral and *Marlborough*.

Q. Did you ſee the *Marlborough*, when her Maſts went away?

A. Yes.

Q. Did no Ships go down to her Aſſiſtance?

A. No, I ſaw none.

Q. Did you never ſee the *Royal Oak*, at any Part of the Engagement?

A. I never did, ſo as to diſtinguiſh her to be the *Royal Oak:* I was blinded by my Foreſail and Spritſail, to every thing ahead; and ſaw nothing but what came open on the Starboard-ſide of my Sails.

Q. Did you ſee any of your Diviſion engage with any of the Four *Spaniſh* Ships?

A. I did not ſee any: I ſaw Smoke on the Starboard-ſide of my Sails, which muſt have been from the Ships ahead, or to Windward; but I don't know from what Ships; for, after hauling up from the Line of Battle abreaſt, I dropt to Windward and aſtern of the Vice-Admiral; and my whole Endeavours were, to get ahead of him again; and I could ſee nothing but in the Opening between the Lee-Leech of my Foreſail and the Vice-Admiral's Ship.

Q. What Diſtance were the Four *Spaniſh* Ships from you, when the Admiral began to engage?

A. When the Admiral firſt began to engage, the ſternmoſt Ship of the *Spaniards* was about Five Miles from the Vice-Admiral.

Q. Did thoſe Four *Spaniſh* Ships come up with you?

A. Yes; they drew nearer continually, by both ſteering to cloſe our Lines.

Q. When did the Vice-Admiral fire at them?

A. Between Four and Five o'Clock.

Q. When did the *Spaniſh* Admiral bear away?

A. Before that: I believe, when the *Spaniſh* Admiral ſaw the Fireſhip coming down, he edged away.

Q. Did not the Four *Spaniſh* Ships edge away, before the *Spaniſh* Admiral bore away?

A. No; they ſteered for their Admiral.

Q. Did they ever come within Gun-ſhot of your Diviſion?

A. I believe not; there were only the *Dunkirk* and *Cambridge* of our Diviſion ahead of me; and I believe neither of them was within Gun-ſhot.

Q. What Ships did the Smoke come from, which you ſaw?

A. They muſt have been the Four Ships of the Centre Diviſion, ſtationed aſtern of the *Marlborough*; or the Two headmoſt Ships of the Vice-Admiral's Diviſion; or both.

Q. Were thoſe Ships that the Smoke came from, within Gun-ſhot of the Enemy?

A. They were not within Point-blank.

Q. If the Four Ships aſtern of the *Marlborough* had bore down equally with the *Marlborough* and *Namur*, and brought up in a Line with thoſe Two Ships, Would they have been within Gun-ſhot of any of the Four *Spaniſh* Ships?

A. No; I think they would not at that time; for the *Spaniſh* Ships were not got up.

Q. What time do you think it would have been, when thoſe ſternmoſt Ships could have come within Gun-ſhot of the *Royal Oak?*

A. If thoſe Four Ships, at the Beginning of the Engagement, had been in a Line with the Admiral and *Marlborough*, I believe the Headmoſt of the *Spaniſh* Ships might have been abreaſt of the *Royal Oak*, between Three and Four o'Clock.

Q. If the Four Ships aſtern of the *Marlborough* had bore down in a Line, abreaſt with the *Marlborough* and *Namur*, and brought up in their proper Stations in the Line, as far to Leeward as the *Namur* and *Marlborough*, Would there have been any Ship for the *Royal Oak* to have engaged with?

A. No; I don't think there would; for the Four *Spaniſh* Ships were not far enough ahead at the Beginning of the Engagement.

Q. At what o'Clock would the Headmoſt of thoſe *Spaniſh* Ships have been up with the *Royal Oak?*

A. Between Three and Four o'Clock.

Priſoner asked,

Q. How long, after the Admiral and *Marlborough* bore away, did you obſerve the Four Ships aſtern of the *Marlborough* bear away?

A. I did not obſerve them to bear away at all; I ſaw only the Admiral and *Marlborough* bear away.

Q. Was it poſſible for the *Royal Oak* to get up to the Aſſiſtance of the *Marlborough*, before the Admiral made the Signal to leave off Engaging?

A. I did not ſee the *Royal Oak*; I was blinded by my Spritſail.

Q. Did you ſee any Ship go down to the Aſſiſtance of the *Marlborough*, after ſhe loſt her Maſts?

A. I did not ſee any Ships at all go down to her Aſſiſtance, for the ſame Reaſon. I ſaw the Admiral and *Marlborough* to Leeward of me; but I did not ſee any of the other Ships: But if the other Ships had bore down, ſo as to have been in a Line with the Admiral and *Marlborough*, I muſt have ſeen them.

Court asked,

Q. Did you ſee the *Real* bear away?

A. Yes.

Q. Did ſhe bear away, before the Fireſhip came down?

A. Yes, before I ſaw the Fireſhip bearing down; but ſhe might ſee the Fireſhip, before I did; and I judged, that the Fireſhip going down, was the Reaſon of her Bearing away.

Q. Did you never ſee the *Cambridge* engage to Leeward of the *Royal Oak?*

A. I neither ſaw the *Cambridge*, or the *Royal Oak*; I did not ſee any Ships, but the Admiral and *Marlborough*, to Leeward of my Sails; and as my principal Buſineſs was to get ahead of the Vice-Admiral, I minded my Steerage, and did not obſerve thoſe Ships at all.

Priſoner asked,

Q. Did you ſteer the ſame Courſe as the Admiral and *Marlborough* did?

A. Yes; till the Admiral and *Marlborough* bore down before the Wind, athwart me, to begin the Engagement.

Q. Did you ſteer as they did?

A. We ſteered for them.

Q. How was the Wind?

A. Upon the Admiral's Beam, and abaft our Beam, after the Admiral began to engage, and till he hauled off.

Q. If you had hauled upon a Wind, in the Situation you was in, Would you not have been to Windward of the Admiral?

A. Yes; the ſternmoſt Ships were the weathermoſt; as they always are, when a Fleet (in or near a Line) ſails Large.

Then he withdrew.

Then the Court adjourned to Monday *Morning, Eight o'Clock.*

The

The Third Day upon Captain EDMUND WILLIAMS's *TRYAL, On Board His* MAJESTY's *Ship the* London, *at* Chatham.

MONDAY, 14th *October*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, as were on *Friday* laſt.

The Priſoner was brought in by the Marſhal, and the Witneſſes ordered to be called in.

Anthony Pinno, Maſter's Mate on board the *Namur*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 54.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Middle-Gun-Deck.

Q. Did the *Royal Oak* run down ſo far to Leeward as the Admiral; and bring up in a Line?

A. Not till between Three and Four o'Clock in the Afternoon: Then ſhe bore down.

Q. Where was the *Royal Oak* till then?

A. Upon our Weather-Quarter.

Q. How far was ſhe to Windward?

A. About Two Miles to Windward, and aſtern withal.

Q. Did ſhe come into a Line with the *Marlborough?*

A. No; ſhe came into the Line with us.

Q. Was ſhe ever in a Line with the *Marlborough?*

A. I believe ſhe was.

Q. At what time?

A. About Three o'Clock, when ſhe bore down.

Q. Are you ſure ſhe was then in a Line with the *Marlborough?*

A. I believe ſhe was, to the beſt of my Judgment.

Q. Did ſhe cover or relieve the *Marlborough*, from the *Real*'s Fire?

A. I believe ſhe did, at that time.

Q. Did you ſee her fire at the *Real?*

A. I ſaw her fire at the Enemy; but I don't know whether ſhe fired at the *Real*.

Q. Did ſhe fire at the *Hercules?*

A. I can't be certain; I don't know what Ship ſhe fired at.

Q. Do you know where ſhe was before Three o'Clock?

A. To Windward.

Q. What was ſhe doing?

A. I don't know.

Q. Was there any Ship for her to engage, before Three o'Clock?

A. No.

Q. Was the Signal for the Line of Battle then flying?

A. Yes.

Q. What time did you ſee the *Royal Oak* engage the Enemy?

A. Between Three and Four o'Clock.

Q. What Diſtance was ſhe from the Enemy, when ſhe engaged?

A. About a Mile and an Half, or better, I believe.

Q. Did you ſee any Shot fall ſhort of her from the Enemy?

A. No.

Q. What Diſtance was you from the *Royal Oak?*

A. About Two Miles.

Q. Did you ſee any Shot at all?

A. No.

Then he withdrew.

Lieutenant *Bellamy*, of the *Torbay*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 83.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Upper-Deck.

Q. Do you think, from the time the *Marlborough* loſt her Maſts, to the time the Action was over, that the *Royal Oak* could have given Aſſiſtance to the *Marlborough?*

A. Yes; I believe any of the Four Ships might, if they had been ordered; but it would not have been prudent without Orders.

Q. Could She have done it?

A. To be ſure ſhe could; there was Wind ſufficient.

Q. What Diſtance was the *Royal Oak* from the *Marlborough*, when the *Marlborough* loſt her Maſts?

A. About Four Miles.

Q. What time did ſhe loſe her Maſts?

A. About Half paſt Three: The *Marlborough* ceaſed Firing between Four and Five o'Clock; about Half paſt Four.

Q. Why did ſhe ceaſe Firing?

A. Becauſe the *Real* bore away.

Q. Was there Wind enough in that Hour to have carried the *Royal Oak* to the Aſſiſtance of the *Marlborough?*

A. No, not in that time; the Ships not going above a Mile and an Half an Hour.

Q. If

Q. If ſhe had continued in a Line, and brought up as the *Marlborough* did, Could ſhe have been of Aſſiſtance to the *Marlborough?*

A. The Ships ahead of her could have been of more Aſſiſtance, and have got up to the *Real* ſooner.

Q. Juſt now you ſaid, She could have been of Aſſiſtance to the *Marlborough?*

A. Yes, to be ſure ſhe could, if ſhe had bore down when the *Marlborough* did.

Q. Did you obſerve the *Royal Oak* to make more Sail than ſhe did at firſt?

A. I did not obſerve that.

Q. How far do you think you was from the *Royal Oak*, when the *Marlborough* loſt her Maſts?

A. About a Mile and an Half, or Two Miles.

Q. Did you ever ſee the *Royal Oak* in a Line with the *Malrborough?*

A. No.

Q. Did you ever ſee her to Leeward of the *Marlborough?*

A. The *Marlborough* was ahead of us; and our Spritſail being ſet, prevented my Seeing perfectly; but I never ſaw her to Leeward of the *Marlborough.*

Q. You ſay, The *Marlborough* bore ahead of you?

A. Yes, we ſteered for the *Marlborough.*

Q. Which was the Leewardmoſt of the Four Ships aſtern of the *Marlborough?*

A. I think, the *Royal Oak* was, when I ſaw her.

Q. When the *Marlborough*'s Maſts were carried away, Was the *Royal Oak* the leewardmoſt Ship then of the Four?

A. Yes, I think the *Royal Oak* was the Leewardmoſt then, and the *Rupert* the next.

Q. Did you ſay, The *Royal Oak* was Four Miles from the *Marlborough*, when ſhe loſt her Maſts?

A. She was about Four Miles.

Q. How far was you from the *Marlborough* then?

A. We were Six Miles from the *Marlborough*, and Two from the *Royal Oak.*

Q. Did you ever ſee the *Royal Oak* to Leeward of the *Marlborough?*

A. No.

Q. Did you ever ſee the *Cambridge* engage?

A. No, I never did.

Q. Did you ever ſee the *Cambridge* to Leeward of the *Royal Oak?*

A. No; our Spritſail was ſet, and I never ſaw any of the Four Ships to Leeward.

Q. Did you ever ſee the *Cambridge* to Leeward of the *Torbay?*

A. No; I never did.

Q. Do you think you could have ſeen the *Cambridge*, if ſhe had engaged?

A. Our Spritſail being ſet, I could not ſee her, unleſs I had gone to the Bowſprit's End for that Purpoſe.

Q. Perhaps you never ſaw the *Cambridge?*

A. I never ſaw her engage.

Q. Did you ever ſee her at all?

A. Yes.

Then he withdrew.

Lieutenant *Wells*, of the *Torbay*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 76.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Middle-Gun-deck.

Q. Did you never ſee the *Royal Oak* bear down under the *Marlbrough*'s Stern?

A. No.

Q. Did you never ſee her in a Line with the *Namur* and *Marlborough?*

A. No; I never obſerved her to be in a Line with them, after the *Namur* and *Marlborough* bore down.

Q. Did ſhe give any Aſſiſtance to the *Marlborough?*

A. She did not bear down with the *Namur* and *Marlborough:* I don't know what Aſſiſtance ſhe gave the *Marlborough* afterwards, having never ſeen her, to my Knowlege, after the *Namur* and *Marlborough* bore down.

Q. Did you ever ſee the *Cambridge* engage?

A. I don't know any thing of the *Cambridge.*

Priſoner asked,

Q. Did you ſee the *Royal Oak* bear down?

A. I don't know, that I did.

Q. Did you obſerve the *Royal Oak* bear away at all?

A. I don't know that I ſaw any thing of the *Royal Oak* at all, after the *Namur* and *Marlborough* bore down.

Then he withdrew.

Lieutenant *Bucknall*, of the *Torbay*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 77.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Middle-Gun-deck.

Q. Did you ſee the *Royal Oak* bear down with the *Namur* and *Marlborough?*

A. No.

Q. Did ſhe give Aſſiſtance to the *Marlborough*, after ſhe loſt her Maſts?

A. No, not that I know of.

Q. Did you ſee the *Royal Oak* at all?

A. Not particularly.

Q. Did you ever ſee the *Royal Oak* engaged?

A. I ſaw ſeveral Ships fire; but I can't ſay, that I ſaw her fire in particular.

Q. At the time the *Marlborough* loſt her Maſts, Did you ſee the *Royal Oak* then?

A. I then looked out of the Larboard Entering port, and I ſaw the Four Ships to Windward, away upon the Weather Spritſail Yard-Arm.

Q. When you ſaw the Four Sail from your Weather-Entering-port, Did you then ſee the *Marlborough?*

A. No.

Q. How then could you know the *Marlborough*'s Maſts were gone?

A. I then ſaw the *Marlborough* to Leeward, and her Maſts were gone.

Q. Did you ſee the *Royal Oak*, or any of thoſe Four Ships, in a Line with the *Marlborough*, after her Maſts were gone?

A. No; I never ſaw any of thoſe Four Ships in a Line with the *Marlborough*.

Then he withdrew.

Lieutenant *Vaughan*, of the *Torbay*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 77.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Lower-deck.

Q. Did the *Royal Oak* bear down to the Aſſiſtance of the *Marlborough?*

A. No; ſhe did not bear down equally with the *Namur* and *Marlborough*.

Q. Did ſhe bring to, in a Line with the *Marlborough?*

A. No; ſhe did not bear down in a Line with the *Namur* and *Marlborough*; nor did ſhe go to the Aſſiſtance of the *Marlborough*, after ſhe had loſt her Maſts.

Q. Could ſhe have gone to the Aſſiſtance of the *Marlborough?*

A. I believe ſo: I know nothing to the contrary.

Q. What time did the *Marlborough* loſe her Maſts?

A. About Three o'Clock.

Q. What time did the Engagement ceaſe?

A. I can't tell directly; I have not my Minutes here.

Q. The Time is to be conſidered: Do you think the *Royal Oak* could have got up to the Aſſiſtance of the *Marlborough?*

A. There was but little Wind; and ſhe was about Four Miles from the *Marlborough*.

Q. How many Knots might the Ships go then?

A. About a Knot and an Half.

Q. What time did the Admiral wear?

A. In the Evening.

Q. What time did the *Real* go out of the Line?

A. I cannot tell; I have it in my Minutes.

Q. Do you think, as the *Royal Oak* was Four Miles Diſtance from the *Marlborough*, that between the time of the *Marlborough*'s loſing her Maſts, and the time of the Engagement's Ceaſing, or the Admiral's Wearing, that the *Royal Oak* could have got up to the Aſſiſtance of the *Marlborough?*

A. I don't think ſhe could; there was not time for her.

Q. Did you obſerve the *Royal Oak* endeavour to do it? Did ſhe make any more Sail?

A. I can't ſay, that ſhe did.

Q. Did you ſee the *Royal Oak* engage?

A. I never ſaw her engage.

Q. How do you know, ſhe did not go to the Aſſiſtance of the *Marlborough?*

A. I did not ſee her go down with the *Marlborough*: The *Marlborough* was to Leeward of us, and the *Royal Oak* to Windward.

Q. When the *Royal Oak* brought up, Was ſhe in a Line with the *Namur* and *Marlborough?*

A. No.

Q. If ſhe had brought up in her Station in the Line, would there have been any Ship for her to have engaged?

A. No; there was no Ship for her to engage, that I ſaw.

Q. Between the time of the Beginning of the Engagement, and Four o'Clock. Did you ever obſerve the *Royal Oak* to be in a Line with the *Namur* and *Marlborough?*

A. No; I did not.

Q. Did you look at her, to ſee whether ſhe was, or not?

A. No.

Q. I think you ſay, You ſaw the *Royal Oak* upon the Weather-Bow, and the *Marlborough* upon the Lee-Bow?

A. Yes; that was after the *Marlborough* loſt her Maſts.

Q. How did they and the *Marlborough* then bear?

A. I ſaw the *Marlborough* to Leeward of us, and the Four Ships to Windward of us.

Q. Was the Sternmoſt of thoſe Four Ships the Leewardmoſt of the Four?

A. Yes.

Priſoner aſked,

Q. Do you remember, that you ſaw the *Royal Oak*, when ſhe made Sail, and bore away after the Admiral?

A. No; I did not ſee her.

Q. Do you know when ſhe bore away?

A. I do not.

Q. Did you ſee her under Sail?

A. No.

Then he withdrew.

John Maſter, Maſter of the *Torbay*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 84.): And he declared the ſame to be true.

Q. You ſay, The *Royal Oak* did not bear down equally with the *Namur* and *Marlborough?*

A. She

A. She did not; ſhe lay upon our Larboard-Bow, after the *Marlbrough*'s Maſts were gone.

Q. Did you ſee her engage?

A. I ſaw thoſe Ships fire; and I ſaw their Shot fall ſhort, as they croſſed our Bow.

Q. What Ships were they firing at?

A. I can't ſay; I ſuppoſe, the Ship aſtern of the *Real:* They could not fire at the ſternmoſt *Spaniſh* Ships, becauſe they could not reach them.

Q. When the Engagement firſt began, Were thoſe *Spaniſh* Ships abreaſt of you?

A. We never were abreaſt of them after Nine o'Clock in the Morning; and it was not in our Power to come at them all that Day.

Q. When the Admiral and *Marlborough* bore down in a Line abreaſt, if the *Royal Oak*, and the other Ships, had bore down with them, and brought up in a Line with them, Do you think the *Royal Oak* would have been within Gun-ſhot of the Enemy's Four ſternmoſt Ships?

A. No; ſhe would not.

Q. Were thoſe *Spaniſh* Ships in a Line?

A. Yes; they were in a Line; but there was a great Diſtance between them and the *Hercules.*

Q. How long do you believe it might be, before the *Royal Oak* would have been within Gun-ſhot of any of thoſe Ships?

A. I can't tell.

Q. Was the *Royal Oak* ever in a Line with the *Namur* and *Marlborough?*

A. No, never: Thoſe Four Ships were always open upon our Larboard-Bow; and we ſteered directly for the *Marlborough.*

Q. Which was the Leewardmoſt of thoſe Four Ships?

A. They were near in a Line with each other; but the *Royal Oak* was the Leewardmoſt of them.

Q. How far was you from the Centre of the Fleet then?

A. About Five Miles.

Q. What Wind was there then?

A. We had very little Wind.

Q. Did you ſee the *Marlborough*'s Maſts go away?

A. Yes, about Three o' Clock.

Q. Do you think, that, from that time, till the Engagement ceaſed, the *Royal Oak* could have got down to the *Marlborough*'s Aſſiſtance?

A. Yes; I think ſhe could; for the ſame Wind that carried the Fireſhip down, would have carried Her down.

Q. Are you ſure, that, when you ſaw the *Royal Oak*, and the other Three Ships, fire, and their Shot fell ſhort, that ſhe had no other Ship to fire at, but the *Real* and *Hercules?*

A. I am ſure, there was not: She could not fire at any other, but the *Hercules*; for the other Four Ships were too much aſtern: They did not get up, till near Dark: There was a great Diſtance between the *Hercules*, and the other Four Ships.

Q. Did you ever obſerve the *Royal Oak* to give any Aſſiſtance to the *Marlborough?*

A. I never ſaw any of the Four Ships go down to her Aſſiſtance; and I was ſurpriſed, that none of them did.

Q. What Diſtance was the *Royal Oak* from the *Marlborough*, when ſhe loſt her Maſts?

A. About Two Miles.

Q. Did the *Royal Oak* never make a Motion to bear down?

A. Never, that I ſaw; but ſhe was nearer to the Enemy, than the Three Ships ahead of her.

Q. To which of the Enemy?

A. The *Real* and *Hercules.*

Q. What! nearer than the other Three Ships ahead?

A. Yes; becauſe we could ſee between the other Three Ships, and her.

Q. How can that be?

A. I mean, ſhe was more to Leeward, than the other Three.

Q. You ſay, The *Royal Oak* was nearer the Enemy, than the other Three.

A. I mean, ſhe was more to Leeward: I made a Miſtake; I did not mind the Queſtion.

Q. Did you obſerve, when the *Marlborough*'s Maſts went away?

A. Yes.

Q. Did you ſee the *Hercules* quit her Station?

A. I believe, ſhe did, for about an Hour.

Q. What Ship, do you believe, made her do ſo?

A. I believe, the *Marlborough*; but ſhe came back into her Station again: I believe, If the other Ships aſtern had gone down with the Admiral and *Marlborough*, ſhe would not have come back; but, ſeeing no other Ship come down, ſhe came into the Line again.

Q. Did the *Hercules* abide by her Admiral, after that time, as long as he was engaged?

A. Yes; ſhe did.

Q. Did you ſee the *Cambridge* go down?

A. Yes, a little Way, upon Mr. *Leſtock*'s firing a Shot at the *Dunkirk:*—I ſaw her ahead of the Vice-Admiral: I did not ſee her go down.

Q. Did you ſee her go between the *Royal Oak* and the Enemy?

A. No.

Q. Did the *Cambridge*, about Four o'Clock, appear to be to Leeward of the *Royal Oak?*

A. Yes; ſhe was then right ahead of Mr. *Leſtock.*

Q. Did you ſee the *Cambridge* engage?

A. Yes; ſhe fired One Broadſide.

Then he withdrew.

Lieutenant *Bate*, of the *Ruſſell*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 85.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Quarter-deck.

Q. Did you never ſee the *Royal Oak?*

A. I

A. I can't ſay, that I ſaw her particularly during the Engagement; for I had not then ſeen the Line of Battle; and therefore I did not know the Names of the Ships ſtationed aſtern of the *Marlborough*, till after the Engagement was over.

Q. Did you ever ſee the Sternmoſt of thoſe Four Ships fire at the Enemy?

A. I believe I did.

Q. At what time?

A. Towards the Beginning of the Engagement.

Q. Were they then within Gun-ſhot?

A. I believe at firſt they might; but afterwards, they were not.

Q. How long did they engage?

A. They did not engage long; for in a little time they lay by.

Q. What Ship did the *Royal Oak* engage?

A. I can't tell.

Q. Could the *Royal Oak* have engaged any Ship?

A. I can't ſay; I believe ſhe might have engaged the Third Ship from the Sternmoſt of the Enemy.

Q. Can you ſay any thing in particular of the *Royal Oak?*

A. I ſaw all the Four Ships lie to Windward, and did not go down; I thought they might have bore down to the Aſſiſtance of the *Marlborough*; and I wondered they did not:—They did not bear down into a Line with the *Namur* and *Marlborough*.

Q. Did you obſerve the Admiral make any Signal for any of thoſe Four Ships to go down?

A. No.

Q. Was the Signal for the Line, and the Signal for Battle, out?

A. Yes.

Q. What was your Station?

A. The next Ship aſtern of the *Neptune*.

Q. Did you keep in your Station?

A. We were ſeldom out of it.

Q. How long had the Admiral begun to engage, before the Four Ships in the Rear of his Diviſion?

A. They began to fire quickly after the Admiral, and continued Firing a ſhort time; and then ceaſed.

Q. Were any of the Four ſternmoſt Ships of the Enemy within Reach of the Four Ships in the Rear of the Centre Diviſion?

A. No; the *Spaniſh* Ships were then nearer to the Vice-Admiral's Diviſion, than to our Four Ships in the Rear of the Centre.

Q. Did you obſerve the *Royal Oak* to engage again, after ſhe had once ceaſed?

A. I can't ſay, that I did; I don't know, whether ſhe did, or not.

Q. Did you obſerve any thing of the *Cambridge?*

A. I did not make any Obſervation of the *Cambridge*.

Q. Was you in your Station aſtern of the *Neptune* all the time?

A. Yes; we kept it pretty well; ſometimes we dropped aſtern, and then we ſet our Studding-ſails to get up again.

Q. Did you obſerve the *Cambridge* engage?

A. No; I don't remember, that ſhe engaged; I can't tell, whether ſhe did, or not.

Q. Did you ſteer directly for the *Marlborough*, after ſhe loſt her Maſts?

A. Yes, till near Five o'Clock, when we hauled cloſe upon a Wind.

Q. What Diſtance was you from the *Marlborough*, when ſhe loſt her Maſts?

A. I believe, it might be about Four Miles; I can't ſay exactly; but I believe, we were full that.

Q. How did the Headmoſt of the Four *Spaniſh* Ships bear from you, when Mr. *Mathews* began to engage, and at the time when the *Marlborough* loſt her Maſts?

A. I believe, when the Admiral began to engage, the Headmoſt was abaft our Beam; and, when the *Marlborough* loſt her Maſts, I believe, the Headmoſt was before our Beam, and the Sternmoſt about upon our Beam.

Q. How near was the *Marlborough* to the *Hercules*, when ſhe firſt began to fire?

A. I believe, within Muſquet-ſhot; for they appeared to be very near.

Q. At what time was you within Gun-ſhot of the Enemy?

A. We never were: When Mr. *Leſtock* fired a Broadſide at the Enemy, I ſaw the Shot croſs each other about a Quarter of a Mile.

Then he withdrew.

Lieutenant *Dubois*, late a Midſhipman on board the *Ruſſell*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 86.): And he declared the ſame to be true.

Q. Where was you quartered?

A. At Small-Arms, upon the Quarter-deck.

Q. Do you know any thing in particular of the *Royal Oak?*

A. No; there were Four Sail aſtern of the *Marlborough*; but at the Diſtance we were from them, I can't ſpeak as to the particular Ships; I could not tell their Names.

Q. Did you obſerve the Sternmoſt of them bear down, either to aſſiſt the *Marlborough*, or engage the Enemy?

A. No.

Q. Did you ſee her fire?

A. Yes; I ſaw them all fire.

Q. What did they fire at?

A. I can't ſay; they are the beſt Judges of that.

Q. Did you ſee their Shot fall?

A. Yes: I ſaw the Spray of the Water, where the Shot fell; they met Half Way.

Q. What Ship's Shot met theirs Half Way?

A. I believe, the *Hercules*'s Shot.

Q. Were they in a Line with the Admiral?

A. No; they were to Windward.

Q. Were there any Ships for them to fire at?

A. No; not within Gun-ſhot.

Q. What Ship do you imagine they engaged with?

A. I believe the *Hercules*.

Q. Do you imagine the *Hercules* could fire at the *Royal Oak*, which was the Sternmoſt of the Four?

A. She might; but her Shot could do no Execution.

Q. Was it natural for People to fire at Ships, where they could not do Execution?

A. There are Inſtances of it, I believe.

Q. Was there not a Ship nearer to the *Hercules* than the *Royal Oak?*

A. There were the *Marlborough* and *Namur*.

Q. Was the *Hercules*, or the Headmoſt of the Four *Spaniſh* Ships aſtern of her, neareſt to the *Royal Oak*, at the time ſhe fired?

A. I can't ſay; I can't be poſitive; but I believe, they were pretty much upon a Par.

Q. What Diſtance was you from the *Marlborough?*

A. About Five Miles.

Q. Where was you quartered?

A. I was quartered at Small-Arms upon the Quarter-deck; but ſometimes I was at the Bow-ſprit-end.

Q. Do you know any thing particularly of the *Royal Oak?*—Did you ever ſee her bear down towards the Enemy?

A. I can't ſay, that I did.

Q. Was the *Royal Oak* ever nearer to thoſe Four *Spaniſh* Ships? Did you obſerve her to fire at them?

A. I can't ſay; I did not obſerve it.

Q. Did you ever ſee the *Cambridge* fire?

A. No; I don't remember, that I did.

Q. Did you take notice, from the Beginning of the Action to Four o'Clock in the Afternoon, Whether the Leewardmoſt of thoſe Four Ships was ever in a Line with the Admiral, or *Marlborough?*

A. When the *Namur* hauled off, I believe they might be in a Line with her; but not with the *Marlborough*.

Q. Can't you be poſitive?

A. Whenever I obſerved them, they were not in a Line with the *Marlborough*; they might be in a Line with the *Namur*, when ſhe was hauled off.

Q. How long do you think it was, after the *Namur* firſt began to engage, that the Four Ships in the Rear of his Diviſion began to fire?

A. I can't juſtly tell; I think it was near the ſame time.

Q. How long did thoſe Four Ships continue Firing, before you perceived them to leave off?

A. I can't ſay; they might have fired till they wore, as far as I know: They were always firing, when I obſerved them.

Q. When you ſaw them firing, What Ships of the Enemy do you think it was moſt likely they were firing at?

A. I can't tell what Ships they were firing at; I believe they were near equally diſtant from the *Hercules*, and the Headmoſt of the Enemy's Four ſternmoſt Ships.

Q. Were any of them within Gun-ſhot?

A. No; I think not.

Q. What Reaſon have you to think ſo?

A. Becauſe their Shot fell ſhort: I ſaw their Shot make a Spray in the Water.

Q. How far was you from the *Namur?*

A. About Five or Six Miles.

Q. How far was you from the *Royal Oak?*

A. I can't juſtly tell the Diſtance now; to be ſure, we muſt be nearer to her, than we were to the Admiral.

Q. Was it in the Power of the *Royal Oak* to have bore down within Gun-ſhot of the Enemy, and not have broke the Line?

A. If the Four Ships had bore down in a Line with the Admiral and *Marlborough*, they might have engaged the *Hercules*, or ſtopped the Four ſternmoſt Ships of the Enemy from coming up.

Q. I aſk you, If they had bore down, and brought to, in a Line with the Admiral and *Marlborough*, Would they have been within Gun-ſhot of the Enemy's Ships, as they came up?

A. I believe the Sternmoſt of the Four would have been within Gun-ſhot of the Headmoſt of the Four *Spaniſh* Ships, as they came up.

Q. If they had bore down ſo as to take up the Four ſternmoſt *Spaniſh* Ships, Would they not have been to Leeward of the Line?

A. If they had gone to thoſe Ships, they would have been to Leeward of the Line; but they would have been within Gun-ſhot of the *Hercules*, without being to Leeward of the Line.

Q. How did the Headmoſt of the Four *Spaniſh* Ships bear from you, when the *Marlborough* loſt her Maſts?

A. A conſiderable Way before our Beam.

Q. How far?

A. I can't tell how far; the Sternmoſt of them was rather before our Beam at that time.

Q. When the *Marlborough*'s Maſts went away, Did you obſerve any of thoſe ſternmoſt Ships of the Enemy firing?

A. No; I don't remember to have ſeen any of them fire juſt at that time.

Q. Could they have been firing, without your ſeeing it?

Q. If they had been firing, I think, I muſt have ſeen it; and therefore conclude, they did not fire then: I ſaw them firing at the Fireſhip, when ſhe was going down.

Q. What time was it, that you ſaw the Fire-ſhip bearing down?

A. I can't tell exactly; I believe, about Half an Hour after Four; for ſhe blew up.

Q. At what time was the Signal made, for the Fireſhip's Bearing down?

A. I can't remember; I only ſaw her bearing down.

Q. Did you ever ſee the *Cambridge* engage?

A. I never ſaw her engage.

Q. When you obſerved thoſe ſternmoſt *Spaniſh* Ships firing at the Fireſhip, Did you obſerve any of our Ships fire at them?

A. I don't remember, whether they did or no.

Then he withdrew.

Lieutenant *Preſcott*, of the *Buckingham*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 87.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Lower-Gun-deck.

Q. How far was you from the *Royal Oak?*

A. About Three or Four Miles.

Q. Did the *Royal Oak* bear down in a Line with the Admiral?

A. The *Royal Oak* did not bear down far enough to come into a Line with the Admiral, or *Marlborough.*

Q. Did you ever ſee the *Royal Oak* fire?

A. Yes.

Q. At what time did ſhe begin to fire?

A. The *Royal Oak* fired about Two o'Clock.

Q. What Ship did ſhe fire at?

A. I believe, at the Headmoſt of the Four *Spaniſh* Ships.

Q. What Diſtance might ſhe be from that Ship?

A. I believe, about a Mile, or Three-quarters of a Mile.

Q. Was ſhe within Point-blank?

A. No.

Q. Did ſhe ever bear down to aſſiſt the *Marlborough?*

A. She never did.

Q. Did you obſerve, which of the Four Ships aſtern of the *Marlborough* was the Leewardmoſt?

A. As we had the Wind abaft the Beam, the ſternmoſt Ships muſt of courſe have been the Weathermoſt; but the *Royal Oak* was the Weſtwardmoſt of the Four.

Q. From whence did you make your Obſervations?

A. Sometimes on the Quarter-deck, ſometimes on the Upper-deck, and ſometimes from the Gallery.

Q. Did you ever ſee the *Cambridge* engage?

A. Yes; I ſaw the *Cambridge* fire, between Three and Four o'Clock.

Q. Did you ever ſee her to Leeward of the *Royal Oak?*

A. I once ſaw her firing to Leeward of the *Royal Oak*, between Three and Four o'Clock; and, at the time of her Firing, I thought ſhe was about a Cable's Length to Leeward of the *Royal Oak.*

Q. How long did you obſerve the *Cambridge* to engage?

A. She continued her Fire for about Half an Hour.

Q. Did you obſerve the *Royal Oak* to fire at the ſame time?

A. I obſerved ſhe was firing, when the *Cambridge* began to fire; I can't ſay when ſhe left off.

Q. Was the *Cambridge* then within Point-blank of the Enemy?

A. I believe not.

Q. What Ship do you think the *Cambridge* fired at?

A. I believe, the ſame that the *Royal Oak* fired at, the Headmoſt of the Four ſternmoſt Ships of the *Spaniards*; and the *Royal Oak* was then about a Cable's Length to Windward of her.

Q. What time was that?

A. Between Three and Four o'Clock.

Q. From the Beginning of the Engagement till Four o'Clock in the Afternoon, Did you ever obſerve the *Royal Oak* to be in a Line with the *Namur*, or *Marlborough?*

A. No; I can't ſay, that I ever did.

Q. Was ſhe to Windward, or to Leeward, of the Line?

A. She was to Windward.

Q. Do you think, thoſe Four *Spaniſh* Ships paſſed within point-blank Shot of the *Royal Oak?*

A. I think, they did not.

Q. What Diſtance was your Ship from the *Royal Oak?*

A. About Three Miles, or rather more, I believe.

Q. Did you obſerve any Ship bear down to the Aſſiſtance of the *Marlborough?*

A. No.

Q. Did you obſerve the *Royal Oak* make any more Sail one time than another?

A. I think, at the time the *Cambridge* engaged, the *Royal Oak* made more Sail; for ſhe ſhot ahead from the *Cambridge*; and therefore ſhe muſt have made more Sail, or elſe the *Cambridge* muſt have ſhortened Sail.

Q. Had the *Royal Oak* bore down, in a direct Line with the *Marlborough*, and brought up in a Line with her, Would ſhe have had any Ship to have engaged with?

A. Yes; I think, the Headmoſt of the Four *Spaniſh* Ships; not at firſt, but as ſhe had come up.

Q. If the *Royal Oak* had bore down into a direct Line with the *Marlborough*, Would ſhe have had any Ship to have engaged within Point blank, at any Part of the Day?

A. Yes.

Q. What Ship?

A. The Headmoſt of the Four *Spaniſh* Ships, as ſhe came up.

Q. Was not the *Hercules* aſtern of the *Spaniſh* Admiral?

A. Yes; there was one aſtern; and, I believe, it was the *Hercules*.

Q. Could not the *Royal Oak* have engaged that Ship?

A. Yes, if ſhe had made Sail ahead.

Then he withdrew.

Robert Waller, Captain's Clerk of the *Buckingham*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 88.): And he declared the ſame to be true.

Q. Where was you quartered, during the Engagement?

A. I was upon the Quarter-deck, the whole Time.

Q. What Ships were there aſtern of the *Marlborough?*

A. There were Four Sail, which all kept to Windward of the *Marlborough*; but the Sternmoſt of the Four, which was ſaid to be the *Royal Oak*, was the Leewardmoſt of the Four.

Q. Did you ever ſee her bear down, in a Line with the Admiral and *Marlborough?*

A. I believe, ſhe was not in a Line with the *Marlborough*.

Q. Did you ſee the *Marlborough*'s Maſts go away?

A. Yes.

Q. Was the *Marlborough* relieved by her, after ſhe loſt her Maſts?

A. Not by the Sternmoſt of them, to be ſure: She ſeemed to be at too great a Diſtance to have given her any Aſſiſtance.

Q. Did you ſee the *Royal Oak* engage?

A. I ſaw her fire.

Q. What Ship did ſhe fire at?

A. I believe, at the Headmoſt of the Four *Spaniſh* ſternmoſt Ships.

Q. At what time did you obſerve her fire at that Ship?

A. Between Three and Four o'Clock; about an Hour and a Half after the Admiral began to engage.

Q. What Diſtance was the *Royal Oak* from the Enemy?

A. I can't tell, how far the *Royal Oak* was from them.

Q. At what o'Clock did you obſerve the *Marlborough*'s Maſts fall?

A. Between Two and Three o'Clock; about Half paſt Two.

Q. Did you then ſteer for the *Marlborough?*

A. Yes; ſhe was a good deal open, upon our Starboard-Bow.

Q. How did the Sternmoſt of our Four Ships appear to you then?

A. Juſt open, upon our Starboard-Bow.

Q. Did the *Royal Oak* then appear to be in a Line with the *Marlborough?*

A. She was then juſt open, upon our Starboard-Bow; and the *Marlborough* a good deal open.

Q. How did you know, the *Royal Oak* was the Sternmoſt of our Four Ships?

A. I had not ſeen the Line then; but I find ſince, ſhe was the Sternmoſt of the Four.

Q. Did you obſerve the *Namur* at that time?

A. I did not.

Q. What time did you begin to engage the Enemy?

A. We did not engage at all; we were aſtern of Mr. *Leſtock*.

Q. Did you ſee the *Cambridge* engage?

A. I don't remember ſeeing her.

Then he withdrew.

Lieutenant *Baker*, of the *Oxford*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 89.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Lower-deck.

Q. Where was your Ship ſtationed, during the time of the Engagement?

A. Aſtern of the *Revenge*.

Q. What Diſtance might that be from the *Marlborough?*

A. About Six Miles.

Q. How did you lie, with regard to the *Revenge?*

A. Aſtern of her, upon her Quarter.

Q. Relate what you know concerning the *Royal Oak?*

A. I don't know any thing more than is in my Depoſition; the *Royal Oak* was not in a Line with the *Marlborough*.

Q. How did you ſee the Four Ships, with reſpect to the *Marlborough?*

A. I ſaw them to Windward of the *Marlborough*; there was always an Opening between them.

Q. What Diſtance were they from the Enemy?

A. I can't tell; it is impoſſible for me to judge of the Diſtance.

Q. What Diſtance was the *Royal Oak* from the *Marlborough?*

A. I can't tell.

Q. Could the *Royal Oak* have gone to the Aſſiſtance of the *Marlborough?*

A. All the Ships aſtern might have gone to the Aſſiſtance of the *Marlborough*.

Q. How do you know they might have gone down to her Aſſiſtance?

A. As they were to Windward, they might have bore down; I believe they had Wind enough.

Then he withdrew.

Lieutenant *Kearney*, of the *Romney*, called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 90.): And he declared the ſame to be true.

Q. Where

Q. Where was your Ship ſtationed?

A. Between the *Buckingham* and the *Elizabeth?*

Q. What Diſtance was you from the *Royal Oak*, when the Engagement began?

A. About Four Miles.

Q. Did you ever fall into your Station, between the *Buckingham* and *Elizabeth?*

A. Yes; we kept a little to Windward of them.

Q. Did you ever ſee the *Royal Oak* in a Line with the *Namur* and *Marlborough?*

A. Yes; I believe, before they bore down, they were in a Line; but not after the Admiral began to engage.

Q. What Diſtance was the *Royal Oak* from the *Marlborough*, when the *Royal Oak* hauled up?

A. I can't ſay.

Q. Did you ſee the *Royal Oak* fire?

A. I can't ſay whether ſhe fired or not.

Q. Did you ſee the *Marlborough*, when ſhe loſt her Maſts?

A. Yes.

Q. Did you ſee the *Royal Oak* bear down to aſſiſt her?

A. No; I did not.

Q. What Diſtance might the ſternmoſt of thoſe Four Ships aſtern of the *Marlborough* appear to you to be from the *Marlborough*, when ſhe loſt her Maſts?

A. I can't judge as to the Diſtance; they only appeared to me to be to Windward, out of their Stations.

Q. How much did you keep to Windward of the Vice-Admiral's Diviſion?

A. Juſt enough to be at a proper Diſtance to Windward of the *Elizabeth*, ſo that we might have fallen in, to their Succour, if required.

Q. What Diſtance was the ſternmoſt of the Admiral's Diviſion from the *Marlborough*, when ſhe loſt her Maſts?

A. I can't judge what Diſtance; they were not in a Line with the *Marlborough*.

Q. Did you obſerve the *Marlborough*'s Maſts fall?

A. Yes.

Q. Did you obſerve the Four Ships to Windward, for an Hour after that time?

A. I did not take ſo much notice of them afterwards, as before.

Q. Did you obſerve, during that time, any of them to bear down to the *Marlborough*'s Aſſiſtance?

A. No.

Q. What Ships was you appointed to ſuccour?

A. The *Buckingham* and *Elizabeth*.

Then he withdrew.

John Coultas, Maſter of the *Romney*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 90.): And he declared the ſame to be true.

Q. Did you ever ſee the *Royal Oak* bear down?

A. I don't know which was the *Royal Oak*.

Q. Did you ever ſee the Sternmoſt of thoſe Four Ships bear down?

A. I obſerved the Sternmoſt of thoſe Ships was more to Leeward than the others, and more in a Line with the *Marlborough* and *Namur*; ſhe was nearer to the *Marlborough*'s Wake, than either of the others were.

Q. What Diſtance was the *Royal Oak* from the *Marlborough?*

A. I can't ſay: We were Six Miles from the *Marlborough*.

Q. Did you obſerve the Sternmoſt of thoſe Ships engage?

A. I think I ſaw all the Four Ships fire.

Q. What Diſtance were they then from the Enemy?

A. I can't judge of the Diſtance.

Q. Were they within Gun-ſhot?

A. I can't ſay they were within Gun-ſhot; I ſaw ſome of their Shot fall ſhort.

Q. What Diſtance was you from the *Marlborough?*

A. About Six Miles.

Q. Did you obſerve the *Marlborough* loſe her Maſts?

A. Yes.

Q. At what time?

A. About Half paſt Three.

Q. Was the *Royal Oak* more to Leeward than the other Three?

A. I am poſitive, the Sternmoſt of the Four Ships was the Leewardmoſt.

Q. If the *Royal Oak* had bore down, and brought to, in a direct Line with the *Marlborough*, How far would ſhe have been from the *Spaniſh* Ships coming up?

A. I can't tell; I did not make that Obſervation; it is a great while ago: If it had been lately, I might have remembred better.

Q. At the time you ſaw our Four Ships engage, Were any of the Four ſternmoſt *Spaniſh* Ships far enough ahead for the *Royal Oak* to have engaged within Gun-ſhot?

A. I can't ſay that; for we were a great Way off.

Q. If ſhe had bore down, to have engaged within Point-blank, Would ſhe not have been to Leeward of the *Marlborough?*

A. Yes; ſhe would.

Q. Were the Four *Spaniſh* Ships coming up upon a Wind?

A. No; they were going Large: They ſeemed to go more from the Wind than we did, and keeping the *Real* upon their Weather-Bow.

Q. Do you think thoſe Four *Spaniſh* Ships could have fetched the *Marlborough*, when her Maſts were gone?

A. Yes; I am ſure they could; if not have weathered her, they could have kept South-South-Eaſt, and we went South-South-Weſt: I can't tell within a Point of the Compaſs.

Then he withdrew.

John

John Pope, Midſhipman on board the *Buckingham*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 87.) : And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. Do you know any thing of the *Royal Oak?*

A. I know nothing of the *Royal Oak.*

Q. Do you know which of the Four Ships was the *Royal Oak?*

A. I can't ſay which was the *Royal Oak*; I ſaw there were Four Ships aſtern, but I can't tell whether the *Royal Oak* was one of them.

Q. Did ſhe bear down in a Line with the Admiral and *Marlborough?*

A. No; none of thoſe Four Ships did: I can't ſay any thing of the *Royal Oak* in particular.

Q. Did the ſternmoſt Ship of thoſe Four give any Aſſiſtance to the *Marlborough?*

A. No.

Q. Did you ſee the ſternmoſt Ship engage?

A. I ſaw them all fire; but it was at a great Diſtance.

Q. Were they within Gun-ſhot?

A. They might be within random Gun-ſhot; but they were not near enough to engage; they fired at ſo great a Diſtance, that I could not tell what they fired at; and, I heard our People cry out Shame upon them.

Q. At what time did they begin to fire?

A. I can't tell; they fired ſo irregularly, that it was impoſſible to tell, when any of them began.

Q. How far was you from the Sternmoſt of thoſe Four Ships?

A. About Four Miles.

Q. Did you ſee the *Marlborough*'s Maſts fall?

A. Yes.

Q. Did you take notice of the Four *Spaniſh* Ships to Windward then?

A. Yes.

Q. How did they bear, with regard to your Ship?

A. They were to Windward of us.

Q. How was the *Marlborough* then?

A. The *Marlborough* was ſomething to Leeward, upon our Starboard-Bow.

Q. Did you never ſee any of thoſe Four Ships nearer the Enemy than the reſt?

A. Yes; I think, the Headmoſt of them was, after the Fireſhip blew up.

Q. Did you never, at any time of the Day, obſerve the Sternmoſt of thoſe Four Ships engage the Enemy nearer than when you ſay, the People cried out Shame upon them?

A. No; I never did.

Q. Did you ſee the *Cambridge* that Day?

A. Yes.

Q. Did you obſerve her to fire?

A. Yes.

Q. At what Diſtance?

A. At a great Diſtance.

Q. Was ſhe to Leeward of the *Royal Oak?*

A. No; rather to Windward, if any thing: It was at a great Diſtance from the Enemy, and aſtern of the *Royal Oak.*

Q. Was the *Cambridge* to Leeward of the Sternmoſt of the Four, when ſhe fired?

A. They were much about in a Line.

Q. Did you obſerve the Sternmoſt of the Four Ships to make more Sail, after the *Marlborough* loſt her Maſts, to bear down to her Aſſiſtance?

A. No; I can't ſay that.

Q. Did you ſee any one of thoſe Four Ships go to her Relief?

A. No: I ſaw no Ship bear down, till after the Fireſhip blew up; when the *Dorſetſhire* bore down, and was to Leeward of the *Marlborough.*

Q. Was ever any of thoſe Four Ships in a Line with the *Marlborough?*

A. No; not one: I can't ſay, what they might be with the Admiral, after he hauled off.

Q. Had thoſe Four Ships, or any of them, bore down, ſo as to have been in a Line with the *Namur* and *Marlborough*, Would they have been in a proper Station, ready to have received the Four *Spaniſh* Ships coming up?

A. Yes; doubtleſs, they would; or have forced thoſe Four Ships to bear away before it.

Then he withdrew.

Joſias Fownes, Maſter of the *Oxford*, was then called; but, not appearing, and there being no other Witneſſes in Support of the Charge, the Priſoner was told, That he might call in any Witneſſes he had in his Defence; and the Priſoner deſired, That *John Stevens*, Maſter of the *Royal Oak*, might be called in.

John Stevens, Maſter of the *Royal Oak*, called in, and ſworn.

Q. Relate what you know of the Behaviour of the *Royal Oak*, during the Engagement.

A. About Half an Hour paſt Eleven o'Clock the *Royal Oak* came into the Fleet, and went down under the Admiral's Stern: Captain *Ruſſell* hailed Captain *Williams*, and told him not to come on board, but to go into his Station, between the *Rupert* and *Dunkirk*; which we accordingly did, as ſoon as poſſible: And when we were in our Station, about Half paſt Twelve, the Admiral made the Signal to engage; and, about One, the Admiral and *Marlborough* bore down, to engage the *Real:* Soon afterwards the *Rupert* did the ſame; and we followed her, and engaged a Ship that was ſingle; which was at a good Diſtance, both from the *Hercules*, and from the other Four *Spaniſh* Ships aſtern: As we were bearing down to this Ship, her Shot hit us once or twice in the Hull, and many flew over us: Then, as ſoon as the *Rupert* brought to, who went down with us, we did the like; but, being pretty near her, we were obliged to lay all aback; which brought us to Leeward of the

Rupert, about a Cable's Length; and, preſently after, we began to engage the above-mentioned Ship, which we took to be about a Sixty-Gun Ship; and after we had engaged her about Half or Three-quarters of an Hour, ſhe bore away out of Gun-ſhot of us: Then Captain *Williams* ordered us to ceaſe Firing, the Shot not reaching her: Then we run up to the *Rupert*, and hailed Captain *Ambroſe*, and asked, if he would not bear down to the other Four Ships, that were coming up: Captain *Ambroſe* came into his Gallery; but I did not hear any Anſwer from him: Soon afterwards we bore down ſingly to the Four Ships, that were coming up; and, as they came up to us, were about a Quarter of a Mile off; and then they began to engage us; and we returned the Fire for about an Hour; and, ſeeing no Ship nearer us than within Two Miles, which was the *Dunkirk*.—

Q. Where was the *Rupert* all this time?

A. I did not obſerve the *Rupert* bear down with us:—Seeing no other Ship nearer than the *Dunkirk*, which was about Two or Three Points upon our Weather-Quarter, we hauled up again, a little, as a Ship, which, I think, was the Sternmoſt of the Four, had raked us; and a Shot went into the Centre of the Head of our Main-maſt, in the After-Part of it.

A. What Ship was that from?

A. I think, it was the ſternmoſt Ship of thoſe Four; and they raked us fore and aft.

Q. What other Damage did you receive?

A. Another Shot had carried away Two-Thirds of our Mizen-topmaſt, and Part of the Larboard-Cheek of the Mizen-maſt.

Q. Was it this that occaſioned your Hauling up?

A. Yes: We then hauled up, and came nearer to the *Rupert*, within about a Quarter of a Mile of her, or thereabout: After that, about Half paſt Four, we ſaw the *Cambridge* coming up: Upon which the Captain ordered the Helm aport, to bear down ahead of the *Cambridge*, to engage thoſe Ships again; but, about Eight or Ten Minutes after, the Admiral hauled down the Signal for Engaging, and hoiſted a White Flag at the Fore-topmaſt Head, and wore.

Q. How long did you engage the laſt time?

A. I believe, about an Hour; then, as the other Ships wore, we ſet our Foreſail, and wore likewiſe, in our Station, after the *Rupert*; but, about Half an Hour before that, the *Marlborough* went ahead of us, and gave us Three Cheers; which we returned: Afterwards, our Wearing brought us pretty near the *Real*; I believe, within Half a Quarter of a Mile, within about Muſquet-ſhot.

Q. What time was it then?

A. It was then almoſt dark; and, as we paſſed by her, we fired ſeveral Broadſides at her, and the other Five Ships, as we paſſed by them, in ſtanding to the Northward:— Captain *Williams* often ſtamped, and was very uneaſy; and ſaid to me, That he wondered, the Ships ahead, and aſtern, and to Windward of us, did not come down: The *Eſſex* was a great Way to Windward of us; I believe, a Mile and an Half, or Two Miles.

Q. Which was the neareſt Ship ahead of you?

A. The *Rupert* was the neareſt ahead, and to Windward withal.

Q. Which was the neareſt Ship aſtern of you?

A. The *Dunkirk* was; ſhe kept her Wind more than we did.

Q. What Diſtance was the *Rupert* from you, when you engaged the Four Ships?

A. About Half a Mile upon our Weather-Bow.

Q. What do you mean by ſaying, There was no Ship nearer than Two Miles?

A. I mean the Ships aſtern, which were coming up.

Q. You ſay, You engaged a ſingle Ship: How many of the Enemy's Ships were aſtern of that ſingle Ship?

A. Four.

Q. What Diſtance were thoſe Ships from her?

A. About Three Miles.

Q. Was you within point-blank Shot of that Ship, when you engaged her?

A. We were within about Half a Mile; I can't ſay, whether we were within Point-blank, but we had ſeveral Shot hulled us; and her Shot went as far to Windward of us, as we were to Windward of that Ship.

Q. Was the *Rupert* engaged with that Ship alſo?

A. Yes.

Q. What Sail had that Ship? Had ſhe the ſame Sail as the Ships aſtern of her had?

A. Yes, the ſame;— ſhe went away out of Gun-ſhot, and then we left off Firing at her; and, while thoſe other Ships were coming up, we did not engage for about Half an Hour.

Q. What Damage did you receive?

A. The firſt Ship did not hurt us much.

Q. You ſay, Several Shot hulled you?

A. Yes.

Q. Was the *Rupert* as near to her as you, when you engaged her?

A. No, not by a Quarter of a Mile; ſhe was then about a Quarter of a Mile upon our Weather-Bow.

Q. Did that Ship engage you both?

A. Yes.

Q. Did her Shot ſtrike the *Rupert*?

A. I did not look at the Shot going to the *Rupert*; the Enemy's Shot went through our Sails and Rigging.

Q. Did you obſerve any Grape or Muſquet Shot ſtrike your Ship?

A. No.

Q. In the Engagement with the Firſt Ship, Where did the Shot ſtrike you?

A. One Shot entered a little below the Gunnel, and went through the Cheſtree, on the other Side.

Q. Are

Q. Are you ſure it did not come in at the Port?

A. I am ſure it did not: Another Shot, upon the Quarter, went through Two Hammocks, and ſtruck the Timber-head on the other Side.

Q. When you engaged the Four Ships coming up, Where was the *Rupert?*

A. About a Quarter of a Mile upon our Weather-Bow.

Q. Did you ſail better than the *Rupert?*

A. No; I believe, not.

Q. You ſay, You hauled up to her?

A. When we hauled up towards her, we ſet more Sail than ſhe had.

Q. After that Ship bore away, Did you haul up to ſpeak with the *Rupert?*

A. Yes.

Q. When you hauled up to ſpeak to the *Rupert*, How was the *Marlborough* from you?

A. She was as right ahead of us as poſſible.

Q. Were thoſe ſternmoſt *Spaniſh* Ships in a Line with the *Real?*

A. The Ships that were coming up, were a good Way to Leeward of the *Real.*

Q. When you firſt engaged, How was the Admiral from you?

A. At firſt, he was a little to Leeward; but, ſoon after, he was right ahead of us.

Q. How long did you lie inactive, after engaging the Firſt Ship?

A. About Half an Hour.

Q. What time did you begin to engage?

A. I believe, about Two o'Clock, or thereabout.

Q. What Diſtance was the *Marlborough* from you, when you lay inactive?

A. About Two Miles, or better.

Q. Could you not have made Sail ahead, and have aſſiſted the *Marlborough?*

A. Yes, if we had Orders; but the *Dorſetſhire*, *Eſſex*, and *Rupert*, were ahead of us.

Q. Could you not, inſtead of lying inactive, have ſhot up to the *Marlborough*, and have engaged the *Hercules?*

A. Yes; I believe, we could.

Q. When you bore away, after hailing the *Rupert*, Did you not do ſo, with Intent to lie in the Way, to receive and engage the *Spaniſh* Ships coming up?

A. Yes; and we engaged them about an Hour.

Q. Had you any Ship to aſſiſt you?

A. I did not obſerve any Ship at all engage them with us.

Q. When you was in a Line with the *Marlborough*, Did you obſerve any other Ship in a Line between you and her?

A. No; indeed, I did not.

Q. What became of the Ship you firſt engaged?

A. After ſhe bore away, I believe ſhe hauled up again; but it was towards the Evening.

Q. How many *Spaniſh* Ships were there aſtern of that Ship you firſt engaged?

A. Four.

Q. Are you ſure of it?

A. Yes; I am ſure there were Four near together.

Q. How far was the Ship you firſt engaged from the *Hercules?*

A. About Two Miles from the *Hercules*; and about Two Miles, or more, from the Four Ships aſtern.

Q. Do you remember any thing of the *Cambridge*'s ſhooting between you and the Enemy?

A. About Half an Hour after Four, the *Cambridge* was coming up upon our Lee-Quarter, and was firing; upon which, we ſet our Foreſail, and put our Helm aweather; and, a few Minutes after, the Admiral hauled down the Signal to engage, and wore.

Q. How long did you engage thoſe Four Ships?

A. About an Hour.

Q. How near?

A. Within a Quarter of a Mile.

Q. Did the *Rupert* lie inactive, and do nothing?

A. I did not obſerve her to fire any Shot.

Q. What Diſtance was ſhe from you at that time?

A. About a Quarter of a Mile, upon our Weather-Bow.

Q. And did the *Rupert* lie inactive, and do nothing, while you was engaging the Four *Spaniſh* Ships?

A. I don't remember, that ſhe fired a Shot.

Q. What time was this, that the *Rupert* lay inactive?

A. I believe, about Half an Hour after Three.

Q. When Captain *Williams* hauled off from thoſe Four Ships, Do you think, he did it through Fear, or for want of Succour?

A. Not through Fear, but for want of Succour; for he was upon Deck all the time, and did not ſhew any Fear; but was very uneaſy, that our Ships did not come down: He ſtamp'd, and ſaid, What the Devil were the Ships doing! and was ſo vexed, he was going to break his Spying-glaſs; and, if we had not hauled up, I believe we ſhould have been deſtroyed; if we had lain in that Poſition, they could have weathered us.

Q. Suppoſe they had, Where was the Vice-Admiral's Diviſion then?

A. The Vice-Admiral's Diviſion was a great way aſtern.

Q. Do you remember how many Shot you was hulled by?

A. I can't particularly remember; but, I believe, about Fifteen or Sixteen: One in the Fiſh-room, about Three Foot under Water; it did not go quite into the Fiſh-room, but ſtuck in the Timber, and occaſioned a Weeping into the Fiſh-room; but we did not find it out, till ſome time afterwards.

Q. When you firſt brought up to engage, Did you bring up with regard to the Admiral, or with regard to the *Rupert?*

A. With

A. With regard to the Admiral.

Q. And was you in a Line with the Admiral?

A. Yes, as near as poſſible; I ſaw him right ahead.

Q. And was the *Rupert* in a Line too?

A. The *Rupert* was to Windward of us; about a Quarter of a Mile upon our Weather-Quarter.

Q. Why do you think you was in a Line with the Admiral?

A. Becauſe I ſaw the Admiral right ahead: — We brought up in order to engage with the ſingle Ship, ſeveral of whoſe Shot ſtruck us as we were running down; and, ſoon after we engaged, I ſaw the Admiral right ahead, but the *Marlborough* to Leeward.

Q. Was you ever in a Line with the *Marlborough?*

A. Yes; when we engaged the Four Ships.

Q. Was the *Namur* hauled off, at the time you firſt engaged?

A. No.

Q. When you obſerved yourſelf in a Line with the *Namur*, Was the *Namur* then hauled off?

A. Yes.

Q. Did you obſerve the *Marlborough* loſe her Maſts?

A. No:—I ſaw the *Marlborough*, after they were gone.

Q. Would it not have been better for you, to have gone and aſſiſted the *Marlborough*, who was attacked by the *Real* and *Hercules*, than to have engaged the Four *Spaniſh* Ships coming up?

A. I thought it of more Conſequence to ſtop the Four *Spaniſh* Ships, than to go to the Aſſiſtance of the *Marlborough*.

Q. As it has been generally obſerved, that Captain *Williams*'s Eye-ſight was bad, Did you ever hear any-body give Advice to Captain *Williams*, or tell him, he was not near enough?

A. No; I did not:—Juſt before we left off Firing, the Lieutenant told him, They were not near enough: Captain *Williams* ſaid he thought ſo too; and therefore ordered Firing to ceaſe.

Q. Did the *Rupert* bring up, before you brought up?

A. Yes: We brought up to Leeward of the *Rupert*.

Q. If you had bore down in a Line with the *Marlborough*, Would there have been any Ship for you to have engaged with?

A. No.

Q. How long would it have been, before there had been one?

A. About an Hour.— We were in our Station all the time. — We were in a Line with the *Namur*.

Q. Did no-body on board the *Royal Oak* hear the Anſwer Captain *Ambroſe* made, when you hailed him?

A. I heard no Anſwer; but the Mate, upon the Forecaſtle, ſaid, He heard him aſk Captain *Williams* what he ſaid.

Q. How long had the *Namur* engaged, before you began to engage?

A. I believe, pretty near an Hour.

Q. How was you lying with your Head that Hour, with reſpect to the Admiral?

A. We were bearing down to attack that ſingle Ship, which was to Leeward of the *Real*; and when we came to haul up, to engage, the Admiral was upon our Weather-Bow.

Q. Did you and the *Rupert* bear down, to engage that ſingle Ship?

A. Yes: We had no other Ship to engage.

Q. When you was going down to the Enemy, in a Line abreaſt, Were the *Namur* and *Marlborough* upon your Beam?

A. The *Namur* was upon our Beam, and the *Marlborough* a little before the Beam, upon our Bow.

Q. Who brought up firſt?

A. The *Marlborough*, and the *Namur*.

Q. When they brought up, What did you do?

A. We bore down for Half an Hour afterwards, before we brought up.

Q. Then conſequently, when you brought up, you would be in a Line, or rather to Leeward.

A. Yes; ſo we were: — When we brought up, we were in a Line, or rather to Leeward of the Admiral.

Q. When the *Namur* and *Marlborough* bore down to engage, Did you bear down at the ſame time?

A. Yes; as ſoon as poſſible afterwards.

Q. How ſoon afterwards?

A. I believe, within Ten Minutes:—When the *Rupert* bore down, we bore down likewiſe.

Q. What Sail had you then?

A. Three Topſails, and Foreſail, and the Main-buntlines over-hauled.

Q. When you brought up to engage, Was the Admiral engaging? Or had he ceaſed to engage?

A. He had ceaſed to engage.

Q. You ſay, You bore down Half an Hour after the Admiral hauled up: How near was you to the Firſt Ship, when you hauled up?

A. Leſs than Half a Mile.

Q. If you had bore down nearer to that Ship, before you brought up; Would ſhe not have raked you?

A. Yes; I believe ſhe would.

Q. Did the *Spaniſh* Ship you engaged, fire at you, before you fired at her?

A. Yes; I believe ſhe fired Two or Three Broadſides, before we fired.

Priſoner. He has told you my Behaviour, and my Reſolution to near the Enemy:— He ſays, I ſhewed my Inclination to near the Enemy.

Court. He has ſaid ſo.

Then he withdrew.

Lieutenant

Lieutenant *Paterſon*, late Maſter's Mate of the *Royal Oak*, called in, and ſworn.

His Depoſition read.

Lieutenant James Paterſon, *late a Maſter's Mate on board his Majeſty's Ship the* Royal Oak, *at the Time of the late Engagement off of* Toulon, *in the* Mediterranean *Sea, between the ſaid Fleet, and the Combined Fleet of* France *and* Spain, *on the* 11*th of* February, 1743. *maketh Oath* ;

THAT, betwixt Twelve and One o'Clock of the ſaid Day, the Admiral and *Marlborough* bore down, and engaged the *Réal* ; but the Four Ships aſtern of the *Marlborough* (the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak)* did did not bear down ſo ſhort as the Admiral did, but continued edging towards the Enemy : Some time after, as the Three Headmoſt of the ſaid Ships did not bear down, the *Royal Oak* bore down, and engaged the Third Ship from the *Real* (or the Firſt of the Four ſternmoſt Ships), which was then abreaſt of the *Royal Oak* ; and began to engage her, at about the Diſtance of Half a Mile ; the *Namur* and *Marlborough* then bearing about ahead of the *Royal Oak*, or rather upon the Lee-Bow : That, ſoon afterwards, the other Three *Spaniſh* Ships aſtern, coming up, and firing upon the *Royal Oak*, obliged her to haul her Wind, as none of the Ships, either ahead, or aſtern, of the *Royal Oak*, bore down with her ; the *Dunkirk* being then above a Mile on her Weather-Quarter, and the *Rupert* on her Weather-Bow : That, after the *Royal Oak* had hauled up, Captain *Williams* hailed the *Rupert*, when Captain *Ambroſe* came into his Stern-Gallery, and ſaid, What do you ſay, Captain *Williams* ? Captain *Williams* immediately ſaid, Why don't you bear down, Captain *Ambroſe* ? Why don't you bear down ? With ſome other Expreſſions, that this Deponent could not rightly hear ; nor did he hear Captain *Ambroſe*'s Anſwer : That, by the Fire from the *Spaniſh* Ships, the *Royal Oak* had her Rudder damaged, her Main-maſt and Mizen-maſt wounded, Mizen-topmaſt, and Mizen-yard ſhot, the Rigging and Sails very much damaged, and ſeveral Shot in her Hull, ſome of them Two or Three Foot under Water : That Captain *Williams*, during the Engagement, was uneaſy, ſtamped, and ſometimes ſwore, that the other Ships did not bear down : And this Deponent firmly believes, that, had any one Ship bore down with the *Royal Oak*, Captain *Williams* would have bore down ſtill nearer than he was, to the Enemy, and not have quitted them : That, when the *Marlborough* was in Diſtreſs, it could not be expected, that the *Royal Oak* could give her any Aſſiſtance, as ſhe was ſo far ahead, and there were Three Ships between her and the *Royal Oak* ; *viz.* the *Dorſetſhire*, *Eſſex*, and *Rupert*.

James Paterſon.

Sworn before me, this 4th Day of *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered ?

A. Upon the Forecaſtle.

Q. Did the *Royal Oak* bear down ſo far to Leeward, as to bring up in a Line with the *Namur* and *Marlborough* ?

A. At firſt, we did not ; becauſe the Enemy's Ships ſeemed to be at ſome Diſtance, there being a great Opening between them, that we had not any Ship abreaſt of us.

Q. Did you not ſee a ſingle Ship, which you might have engaged ?

A. There was a ſingle Ship ahead of the reſt, open from the Four, which ſeemed to be left by herſelf ; and we engaged with her firſt.

Q. How long did you engage that ſingle Ship, before ſhe bore away ?

A. About a Quarter of an Hour.

Q. Did any other Ship engage her, at the ſame time ?

A. No ; I believe, not.

Q. Where was the *Rupert* then ?

A. Upon our Larboard-Bow, about a Cable's Length.

Q. Did ſhe lie inactive then ?

A. She did not fire for ſome time.

Q. After that ſingle Ship left you, How long was it, before the Headmoſt of the other Four came up with you ?

A. I believe, about Half an Hour.

Q. How long did you continue engaging that headmoſt Ship of the Four ?

A. About Half an Hour.

Q. Did the *Rupert* never come near you, while you was engaging that headmoſt Ship ?

A. She ſtill kept to Windward of us :—She was to Windward of us all the time.

Q. Did not the *Rupert* fire at that Ship, as well as the *Royal Oak* ?

A. I ſaw her firing ; but, I don't know at what Ship.

Q. Was there any other Ship, for her to fire at ?

A. I believe, ſhe fired at that Ship ; becauſe I ſaw no other Ship ſhe could fire at.

Q. After you left off engaging the firſt Ship, What did you do ?

A. We hauled up.

Q. Was it Then that you hailed the *Rupert* ?

A. I am not poſitive, whether it was after the Firſt or Second time of Engaging, that we hailed the *Rupert* : But we did hail the *Rupert* ; but I am not certain, whether it was after the Firſt Hauling up, or after the Second.

Q. What was the Reaſon of your Hauling up the Second time ?

A. Becauſe we received the Fire of the Four Ships coming up ; and no Ships came to our Aſſiſtance.

Q. Was you raked by any of thoſe Ships ?

A. Yes :—A Shot was received in the After-Part of our Main-maſt.

Q. When you was fartheſt to Leeward, engaging thoſe Four Ships, Was you in a Line with the Admiral ?

A. The Admiral was rather to Windward of us, to the beſt of my Remembrance.

Q. How was the *Marlborough* then from you?

A. Near right ahead, or rather to Leeward.

Q. Did you obſerve any of the other Three Ships in a Line between you and the Admiral?

A. No:—They were all to Windward.

Q. Are you ſure of that?

A. Yes: I ſaw the Admiral open to Leeward of them.

Q. Did you take Notice of the *Marlborough*, when ſhe loſt her Maſts?

A. Yes; I ſaw her ſoon after.

Q. Could you have got up to her Aſſiſtance, between that time, and the time of the Signal being made to leave off Chace?

A. I believe, we might, if we had ſet all our Sails; though there was not much Wind.

Q. How much might you go?

A. We might have gone Two or Three Knots.

Q. What Diſtance was you from the *Marlborough?*

A. About Two Miles.

Q. Did you obſerve any of the Three Ships, ahead of you, firing at the Enemy then?

A. Yes; I believe, I ſaw them all Three firing.

Q. If you had hauled cloſe upon a Wind, Do you think you could have weathered thoſe Ships ahead?

A. We might have weathered the *Rupert*; but I don't think, we could have weathered the *Eſſex*.

Q. What Ship do you judge the Shot you received in the Head of your Main-maſt, came from?

A. The Sternmoſt of the Four; or the Ship next to her.

Q. Did it go through the Maſt?

A. No: It lodged in it.

Q. Did the Firſt Ship you engaged, bear away before the Wind, or cloſe with the *Hercules?*

A. She ſeemed to edge away from the Wind.

Q. Did ſhe never return into Action again?

A. I can't tell any thing of that.

Q. Had you any Men killed in the Action?

A. No.

Q. Had you any wounded?

A. Yes, ſeveral; but I don't know the Number: One had his Leg taken off on the Upper-deck, by a round Shot.

Q. What Shot had you, that ſtruck the Ship?

A. About Twelve or Fourteen: — We had one amidſhips, about Two Foot under Water, which ſtuck in the Side; another upon the Quarter, Two or Three Foot under Water; which went almoſt into the Fiſh-Room, and occaſioned a Leak there; Two Shot in the Rudder; one in the Wales, which was cut out afterwards; one came through the beſt Bower-anchor Stock; ſeveral went through the Cut-water; ſome through the Quick-work; and ſome thro' the Ports, when they were down.

Q. Do you know of any that went through both Sides of the Ship?

A. I don't remember any.

Priſoner asked,

Q. Do you remember our backing out Top-ſails upon Bringing to, that we might not fall on board the *Rupert?*

A. I don't remember that; but I am ſure we were to Leeward of her, very near upon her Lee-Quarter.

Q. Did we not bear away as ſoon as the *Rupert* did?

A. Yes.

Q. Did you not obſerve me to be uneaſy, becauſe the other Ships did not come down?

A. Yes; you ſeemed very uneaſy, that they did not.

Then he withdrew.

Lieutenant *Samuel Callbeck*, of Marines, on board the *Royal Oak*, was called in, and ſworn.

His Depoſition read.

Lieutenant Callbeck, *of* Duncombe's *Regiment of Marines, who was on board his Majeſty's Ship the* Royal Oak, *at the late Engagement off* Toulon, *the 11th of* February, 1743. *maketh Oath*;

THAT he remembers the *Royal Oak* bore down, and engaged the Enemy, nigher than the Ships ahead; and that ſhe received the Fire of Four Ships; which obliged her to haul off, as no other Ship bore down with her: At which time, he obſerved Captain *Williams* to be very uneaſy: That he ſtamped on the Deck ſeveral times; and ſaid, he was ſurpriſed what the other Ships were about, that they did not bear down; and either juſt before the *Royal Oak* bore down, or juſt after ſhe hauled up (he is not certain which), Captain *Williams* hailed Captain *Ambroſe*; and aſked him, Why he would not bear down? That, while the *Royal Oak* received the Fire of the Four Ships, her Rudder, Main-maſt, Mizen-maſt, and Mizen-yard, were wounded; and ſeveral Shot were received in her Hull; ſome of them under Water: And, as to Captain *Williams*'s Behaviour, he did not ſee any thing that expreſſed the leaſt Sign of Fear.

Samuel Callbeck.

Sworn this 7th *September*, 1745. before me,
Cha. Fearne, Ju. Adv.

And he declared the ſame to be true.

Q. Acquaint the Court, of what you know of Captain *Williams*'s Behaviour, during the Action?

A. Captain *Williams* hailed Captain *Ambroſe*; and aſked him, Why he did not bear down? and was very uneaſy about it.

Q. Was you to Windward, or to Leeward, of him?

A. We were to Leeward of him, all the time.

Q. Was you near enough, when you began to engage?

A. Before we began to fire, the Enemy's Shot went over us, and ſtruck us.

Q. Was you within point-blank Shot?

A. I can't ſay, as to that.

Q. Had you any Men killed or wounded?

A. Three or Four wounded.

Q. Did you hear Captain *Ambroſe* make any Anſwer, when Captain *Williams* hailed him?

A. No.

Q. Did your People make uſe of Small-Arms, during the Engagement?

A. No.

Q. What was the Reaſon they did not?

A. Becauſe we were not near enough.

Q. Was it through Fear, that Captain *Williams* did not bear down?

A. I believe, it was not through Fear.

Q. You ſay, Captain *Williams* fretted, and was uneaſy, that the other Ships did not come down to his Aſſiſtance?

A. Yes; he was very uneaſy, that the other Ships did not bear down.

Q. Was you near Captain *Williams*, all the time?

A. Yes; I was upon the Poop, and the Quarter-deck.

Priſoner asked,

Q. Do you remember our going to Leeward of the *Marlborough*?

A. Yes; we were to Leeward of her, and cheered her.

Then he withdrew.

Samuel Cloke, Quarter-maſter on board the *Royal Oak*, was called in, and ſworn.

His Depoſition read.

Samuel Cloke, *late a Quarter-maſter aboard of his Majeſty's Ship* Royal Oak, *ſworn, depoſeth*;

THAT, in the Engagement above-mentioned, he was quartered to the Helm: When the Admiral made the Signal to engage, we bore away to the Enemy, under our Topſails and Foreſail, with the *Rupert*; and did not bring to again, till after ſhe had brought to; in doing which, we were very near her, and obliged to lay all aback; which brought us before her Lee-Quarter, where we began to engage a Ship that had hit us ſeveral times in the Hull, Maſts, and Rigging: We ſuppoſed her to be a Ship about Sixty Guns, who, after more than an Hour's Engagement, bore away, out of Shot of us: And, at our Shooting pretty near the *Rupert*, Captain *Williams* called to her from the Larboard-ſide of the Quarter-deck; aſked Captain *Ambroſe* (who came into their Stern-Gallery), if he did not think it proper to bear down nearer the Enemy; adding, That he thought they were too far off: Captain *Williams* ſaid farther, That, if he did not bear down, he might as well throw his Powder and Shot out of the Ports, as to fire at that Diſtance: To which I heard no Anſwer; but he went out of his Gallery. About that time, Mr. *Wilſon* came upon the Quarter-deck; and I heard him ſpeak to the Captain; when the Quarter-maſter, at the Con, ordered the Helm aweather; and ſo we ran down ſome time; then Starboard again; when Four of the Enemy's Ships, being coming up, began to fire on us; which we returned, and continued ſo about an Hour, they ſtill nearing us, as we were under our Topſails; and hit us very often. There was no Ship aſtern of us, nearer than Two Miles; the neareſt was the *Dunkirk*, the Headmoſt of Admiral *Leſtock*'s Diviſion, and about Two Points on our Weather-Quarter. I ſaw Captain *Williams* ſtamping ſeveral times on the Quarter-deck; and heard him ſay, He wondered they did not come down nearer. The *Rupert*, at that time, was a good Diſtance on our Weather-Bow, and the *Namur* right ahead: Soon after, the *Marlborough* went juſt ahead of us, and aſtern of the *Rupert*, and gave us Three Cheers; which we returned, being under our Topſails; and as we had been to Leeward of the *Rupert* all the Afternoon, continued ſo; and did not ſet the Foreſail afterwards, till the Admiral hauled down the Signal for the Line, and wore; when we likewiſe wore after the *Rupert*, and engaged the Enemy on the other Tack; the *Real* being the neareſt Ship to us, of the Enemy, when we wore. No Officer could appear with a firmer Reſolution and Conſtancy than Captain *Williams*; animateing the Men to behave with Courage: And, according to the beſt of my Judgment, nothing was neglected to be done by him, that could poſſibly be done.

his
Sam. C *Cloke*,
Mark.

Sworn by me,
Geo. Atkins, Deputy Ju. Adv.

And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Lee-Helm.

Q. How long did you engage the Firſt Ship?

A. About an Hour.

Q. Was you within Reach of Small-Arms?

A. Several of the Shot came over us.

Q. Did your Marines make uſe of their Small-Arms?

A. I can't tell; they were upon the Poop.

Q. Did you ſee the Admiral, when you firſt brought up to engage?

A. I believe, we were as near to the Enemy, when we firſt began to engage, as the Admiral was, when he began to engage.

Q. How was the Admiral from you then?

A. The Admiral was then a little upon our Lee-Bow, becauſe we did not begin ſo ſoon as he.

Q. After you had hailed Captain *Ambroſe*, Did you bear down by yourſelves?

A. Yes.

Q. Did you bring up, before the Enemy began to fire at you?

A. Juſt as we brought up, the Enemy came up, and began to fire at us.

Q. What

Q. What Diſtance was you from the headmoſt of thoſe Four Ships, when you fired?

A. About Half a Mile.

Q. Do you think, you was never nearer?

A. Yes; I believe we might be rather nearer, as they ſhot up by us.

Q. What Diſtance was you from the Firſt Ship that you engaged?

A. About Half a Mile.

Q. Did you not wear, after you engaged the Firſt Ship?

A. We edged away afterwards down to the Four Ships: We were almoſt before the Wind, before we engaged thoſe Four Ships.

Q. Did your Captain call to you to No Near, or to Luff, in the time of the Engagement?

A. The Captain himſelf often called to port the Helm.

Q. How had you the Wind then?

A. We were about Two Points from the Wind.

Q. Did you ſee the *Marlborough*, when her Maſts were gone?

A. Yes.

Q. Did you ſee any Ship between you and the *Marlborough* then?

A. No; there was none, when ſhe loſt her Maſts.

Q. How did the *Marlborough* bear from you then?

A. A ſmall Trifle upon our Lee-Bow.

Q. What Diſtance was you from her then?

A. I can't tell.

Priſoner aſked,

Q. Do you remember our going under the *Marlborough*'s Stern?

A. Yes; after we had engaged thoſe Ships, we run under her Stern, and gave her Three Cheers; which ſhe returned.

Court aſked,

Q. Did you ſee any of the Enemy's Ships out of your Stern-Window?

A. Yes.

Q. When you looked out of the Stern-Window, What Ships did you ſee?

A. I ſaw the Sternmoſt of the Four, juſt in our Wake.

Q. Where was the Headmoſt of them then?

A. The Headmoſt of them was then upon our Beam.

Q. What Sail had the Headmoſt of them ſet?

A. Her Topſails and Foreſail.

Q. What Sails had you ſet?

A. Our Topſails; and we hoiſted our Jib, and Main-topmaſt-ſtayſail, to ſhoot nearer the *Rupert*.

Q. Did you hail the *Rupert* once, or twice?

Priſoner. I believe, we hailed her Ten times; but it was all at one time.

Q. Did you hear Captain *Ambroſe* make any Anſwer, when you hailed him?

A. No; I don't remember, that he did: I ſaw him in his Gallery.

Q. Did he bear down with you?

A. I did not ſee, that he did.

Q. In what Poſition was you, with regard to the *Rupert*, when you hailed her?

A. We were upon the *Rupert*'s Lee-Quarter.

Q. Do you think, you could have diſtinguiſhed the Voice at that time, if there had been any Anſwer?

A. I could not hear any Anſwer.

Q. How near was you to the *Rupert*?

A. At a very little Diſtance: We were as near as that Ship aſtern of us now (pointing to a Ship aſtern of the *London*, at about One hundred Yards Diſtance): I ſaw Captain *Ambroſe* take up a Trumpet in his Hand; but I could not hear any thing.

Q. When the Headmoſt of the Four *Spaniſh* Ships was upon your Beam, with her Foreſail and Topſails, How far was the Sternmoſt from you then, in your Wake?

A. A little better than a Quarter of a Mile.

Priſoner aſked,

Q. Don't you believe, that the Ship, which was upon our Beam, was nearer to us, than ſhe that was in our Wake?

A. No; I believe not: I think, ſhe in our Wake was the neareſt.

Q. How did I behave?

A. Captain *Williams* behaved that Day with as firm a Reſolution to deſtroy the Enemy, as any Gentleman could have done.

Q. Do you think, I ought to have gone nearer to the Enemy, than I did?

A. No; I don't think, we ought; for, I believe, if we had, the ſternmoſt Ship of the Four would have weathered us.

Then he withdrew.

James Waters, Boatſwain's Mate on board the *Royal Oak*, called in, and ſworn.

His Depoſition read.

James Waters, *Boatſwain's Mate aboard the ſaid Ship, ſworn, depoſeth*;

THAT, in the Engagement aforeſaid, he was quartered at the Helm. When the Admiral made the Signal to engage, we bore away to the Enemy, under our Topſails and Foreſail, with the *Rupert*; and did not bring to again, till after ſhe had brought to; in doing which, we were very near her, and obliged to lay all aback; which brought us upon his Lee-Quarter, where we began to engage a Ship, who had ſeveral times hit us. We ſuppoſed her to be a Ship of about Sixty Guns, who, bearing away, ſoon got out of Shot of us; and, on our ſhooting pretty near the *Rupert*, Captain *Williams* called to her from the Larboard-ſide of the Quarter-deck, and aſked Captain *Ambroſe* (who came

came into the Stern-Gallery), If he did not think it was proper to bear down nearer the Enemy; adding, He thought, we were too far off. Captain *Ambroſe* aſked, What he ſaid? Captain *Williams* replied, That, if he did not bear down, he might as well throw his Powder and Shot out of the Ports, as to fire at that Diſtance. I heard no Anſwer; but he went out of his Gallery; and, near about that time, Mr. *Wilſon*, our Firſt Lieutenant, came upon the Quarter-deck; and I heard him ſpeak to the Captain, when the Quarter-maſter at the Con ordered the Helm to be put aweather; which being done, we ran down ſome time, until ordered to put the Helm to Starboard again; which we did: And Four of the Enemy's Ships, being coming up, began to fire on us; which we returned, and continued about an Hour, they ſtill nearing us, as we were under our Topſails; and hit us very often. There was no Ship aſtern of us nearer than Two Mile (the *Dunkirk* the neareſt, who was the Headmoſt of Admiral *Leſtock*'s Diviſion), and about Two Points on our Weather-Quarter. I ſaw Captain *Williams* ſtamping ſeveral times on the Quarter-deck, ſaying, He wondered they did not come down nearer. The *Rupert*, at that time, was a good Diſtance on our Weather-Bow; and the *Namur* right ahead, when we hoiſted our Jib and Main-topmaſt-ſtayſail, to ſhoot a little nearer her. Some time after, the *Marlborough* went juſt ahead of us, and aſtern of the *Rupert*, and gave us Three Cheers; which we returned, being under our Topſails; and, as we had been to Leeward of the *Rupert* all the Afternoon, we continued ſo; and did not ſet the Foreſail afterwards, till the Admiral hauled down the Signal for the Line, and wore, as did we, after the *Rupert*, and engaged the Enemy on the other Tack; the *Real* being the neareſt Ship of the Enemy to us, when we wore. The Captain behaved the whole Time like a brave, gallant Officer, cheering the Men, and doing every thing he could to keep them in Spirits, and annoy the Enemy, and omitting nothing that could poſſibly be done, according to the beſt of my Judgment.

James Waters.

Sworn by me,
Geo. Atkins, Dep. Jud. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?
A. At the Wheel.
Q. When you firſt engaged the Firſt Ship, Was you within point-blank Shot?
A. Several of their Shot hit us, and ſeveral went a great Diſtance over us: I don't know what Point-blank is.
Q. Did you fire any Small-Arms?
A. Yes; I believe there were.
Q. Do you know it?
A. No.
Q. Anſwer nothing, but what you know to be Truth:—Did you ſee any Small-Arms fired?
A. I can't ſay; I ſaw Small-Arms in their Hands; but I can't ſay, whether they were fired.
Q. How long did you engage that Ship?
A. Better than an Hour, I believe.
Q. What became of her then?
A. She bore away from us, that our Shot did not reach her.
Q. What did you do after?
A. We ſhot up, and hailed the *Rupert*; and afterwards we bore down again to the Four Ships, and began to engage the Headmoſt, as ſhe came up with us, at about a Quarter of a Mile Diſtance; and then engaged the others at the ſame Diſtance, as they came up.
Q. Did more than one Ship engage you at a time?
A. We had the Fire of all Four; they all fired at us as at the ſame time, when they came up: I believe the Shot, which was lodged in the Main-maſt, came from the Sternmoſt of thoſe Ships, which I ſaw over the Wheel, directly in our Wake.
Q. Did any other Shot ſtrike you?
A. Yes; we had a Shot came in at the Starboard-ſide of the Quarter-deck, and ſtuck in the other Side; and one ſhot away Seven or Eight Foot of the Mizen-yard.
Q. What Diſtance was the *Rupert* then from you?
A. About a Quarter of a Mile, or near Half a Mile, upon our Weather-Bow.
Q. What Diſtance was the *Dunkirk* from you?
A. Near Two Miles.
Q. Do you remember the *Cambridge* coming up?
A. Yes; and, as ſoon as ſhe came up, the Captain immediately ordered the Helm aweather again.
Q. When did the *Cambridge* come up?
A. In the Evening, about Four o'Clock; ſoon after we engaged the Four Ships.
Q. Was ſhe nearer to you than the *Dunkirk?*
A. Yes.
Q. Was ſhe to Leeward of you?
A. Yes: She continued ſo while ſhe fired Two or Three Broadſides; and then ſhe hauled off, upon the Admiral's hauling down the Signal for Engaging.
Q. How near was the *Cambridge* to you, when ſhe ſo engaged?
A. About Three-quarters of a Mile, as near as I can gueſs.
Q. Do you remember any Paſſage that happened between you and the *Rupert*, about Hailing?
A. Yes.
Q. Did you hail the *Rupert*, or did the *Rupert* hail you?
A. We hailed the *Rupert*; for Captain *Williams* ſaid, We were too far off: And he took a Trumpet, and hailed the *Rupert*: And the *Rupert* ſaid, *Royal Oak*, what do you ſay? Then Captain *Williams* ſaid, They might as well throw

their Powder and Shot out of the Ports, if they did not go nearer.

Priſoner aſked,

Q. Do you remember, when the *Cambridge* was coming up to us, Whether ſhe was not right aſtern? And did not our porting our Helm bring her to Leeward?

A. Yes.

Court aſked,

Q. Was the *Cambridge* never between you and the Enemy?

A. I believe, ſhe was.

Q. Was the *Cambridge* ever nearer to the Enemy than you?

A. I believe, ſhe was not nearer to the Enemy than we were.

Q. At what time?

A. At the time, when we engaged the Four Ships.

Q. Was the *Cambridge* ever nearer to the Enemy, than you was before you wore?

A. No.

Q. Was ſhe between you and the Enemy?

A. Yes; ſhe was, when the Helm was ported.

Then he withdrew.

Richard Prieſt, Quarter-maſter on board the *Royal Oak*, called in, and ſworn.

His Depoſition read.

Richard Prieſt, *Quarter-maſter aboard the ſaid Ship, ſworn this Second* September, *depoſeth*;

THAT, in the Engagement aforeſaid, he was quartered to the Con. We joined the Fleet that very Morning; *viz.* 11 *February*, 1743. and ran under the Admiral's Stern; who ordered us to go aſtern of the *Rupert*, between her and the *Dunkirk*. When the Signal was made to bear down, and engage, we bore down after the *Rupert*, under our Three Topſails and Foreſail; and did not bring to, till ſhe brought to. Then we were ſo near her, that we were obliged to lay all aback; which brought her a little on our Weather-Bow; where we began to engage a Ship of about Sixty Guns, they ſuppoſed: Laying along-ſide her ſome time, ſhe edged away from us; and we ſhooting pretty near the *Rupert*, our Captain hailed her from the Larboard-ſide of the Quarter-deck, and aſked Captain *Ambroſe*, If he did not think it proper to bear down nearer to the Enemy; for that we had as good heave our Powder and Shot overboard, as fire at that Diſtance? To which I heard no Anſwer. About this time, Mr. *Wilſon* came upon the Quarter-deck, and ſpoke to the Captain; who ordered the Helm aweather immediately, to bear down nigher: Which we did for ſome time; when Four of the Enemy's Ships came up aſtern of us, and began to fire. Several of their Shot hit us; particularly one hit the Head of the Mizen; another the Head of the Main-maſt; and a third the Head of the Rother: They ſhivered the Maſts pretty much. We engaged theſe Ships about an Hour; and there being no Ship aſtern of us nearer than the *Dunkirk*, who might be about Two Miles on the Weather-Quarter of us; the *Rupert* a good Diſtance on our Weather-Bow; and the *Namur* right ahead; the Captain ſtamped on the Quarter-deck, and wondered why the *Dunkirk*, and the Ships of Mr. *Leſtock*'s Diviſion, did not come down to us. When we neared the *Rupert*, the *Marlborough* went juſt ahead of us, and aſtern of the *Rupert*, we being to Leeward of the *Rupert*, as we were moſt of the Time; and continued ſo, till the Admiral hauled down the Signal for the Line, and wore. Then we wore, after the *Rupert*; and engaged the *Real* on the other Tack, who was the neareſt to us of the Enemy's Ships. The Captain, all this time, behaved as well as any Man in *England*; wanted to get nearer the Enemy; was never off the Quarter-deck; always encouraging the People; and doing every thing he could.

his
Richard + *Prieſt.*
Mark.

Sworn by me,
Geo. Atkins, Dep. Jud. Adv.

And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Cun.

Q. Did you begin to engage the Enemy, when the Admiral did?

A. No.

Q. How long after?

A. About Half an Hour.

Q. What was you doing then?

A. Getting into our Station.

Q. Then you was a great Way aſtern of the Admiral: How far might you be?

A. I believe, about a Mile.

Q. What Diſtance did you engage? Was you within Point-blank?

A. I believe, we muſt; for ſeveral Shot hit us, and went over us, as far as we were from the Enemy.

Q. Had you any Men killed?

A. No; we had ſeveral wounded: One had his Leg ſhot off; and another his Fingers ſhot off.

Q. Did you make uſe of Small-Arms?

A. No.

Q. When you was bearing down, What Orders had you to ſteer by?

A. We had no particular Orders: We followed the *Rupert*.

Q. Was you not to Leeward of the *Rupert*?

A. Yes: Shooting very near her, we were forced to lay all aback; which brought us to Leeward of her.

Q. What Sail had you, when you was bearing down?

A. Foreſail and Topſails.

Q. Was you in a Line with the Admiral, when he brought up?

A. To the beſt of my Remembrance, the Admiral was a little upon our Lee-Bow.

Q. Where was the *Marlborough* then?

A. I can't ſay: I did not obſerve; but, I think, ſhe was then upon our Quarter.

Q. Recollect yourſelf: When you firſt brought up to engage, How did the Admiral bear from you?

A. A little upon our Lee-Bow.

Q. And how did the *Marlborough* then bear?

A. She was aſtern of the *Namur*.

Q. You ſaid, She was upon your Quarter before: Then, by that, ſhe muſt be before your Beam?

A. Yes; ſhe was before our Beam.

Q. You ſaid before, She was upon your Quarter: You muſt mean the *Namur*'s Quarter?

A. Yes; I meant, that ſhe was upon the *Namur*'s Quarter.

Q. How long did you engage that Ship?

A. About an Hour.

Q. When you hailed the *Rupert*, Did your Captain ſay, You had better throw the Powder out of the Ports, or we had better?

A. I believe, he ſaid, We; I can't be poſitive.

Q. How many of the Enemy's Ships fired upon you at once?

A. I believe, that we received the Fire from Three.

Q. What Diſtance was you then from them?

A. I believe, about a Quarter, or Half a Mile.

Q. Do you remember, that you had any Men killed by thoſe Ships?

A. No.

Q. Did any Shot fly over, or hull you?

A. Yes; I remember a Shot, which was lodged in the Head of the Main-maſt, which muſt have come from the Sternmoſt of the Enemy's Ships; the Mizen-maſt was damaged, and the Rudder.

Q. How was the Sternmoſt of the Enemy from you?

A. She was aſtern of us.

Q. Where were the other Two Ships you engaged?

A. Away upon our Beam.

Q. Which was neareſt to you, that Ship aſtern of you, or thoſe upon your Beam?

A. I believe, that aſtern; one of them was a little abaft our Beam.

Q. Do you think the Sternmoſt of the Enemy's Ships, by her Motions, had any Intention to weather you?

A. Yes; I believe ſhe had, and that ſhe would have weathered us, if we had not hauled our Wind; we were then about Two Points from the Wind.

Q. How long did you engage the Firſt Ship?

A. About an Hour, and then ſhe bore away from us.

Q. Did you obſerve her to be diſabled, when ſhe bore away?

A. No.

Then he withdrew.

The Court adjourned till To-morrow Morning, at Eight o'Clock.

Fifteenth, Sixteenth, and Seventeenth October, 1745.

The Fourth, Fifth, and Sixth Days upon Captain EDMUND WILLIAMS's *TRYAL,*

On Board His MAJESTY's *Ship the* London, *at* Chatham,

Tueſday, the 15th *October*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, as were Yeſterday.

The Priſoner was brought in by the Marſhal.

The Proſecutors for the Crown acquainted the Court, That *Joſias Fownes*, late Maſter of the *Oxford*, was on board the Ship: He was called in; and the Court were ſatisfied with the Reaſons he gave for his not appearing, when he was called Yeſterday; and ordered him to be ſworn.

Joſias Fownes ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 89.): And he declared the ſame to be true.

Q. What Diſtance was you from the *Royal Oak?*

A. A great Diſtance.

Q. How many Miles?

A. About Three Miles, if not more.

Q. Was ſhe within Point-blank of the Enemy?

A. It was not poſſible for me, at that Diſtance, to know whether ſhe was within Point-blank, or no.

Q. Did you ſee the *Royal Oak?*

A. I can't tell which was her; for our Line of Battle was not made publick.

Q. Where was your Ship ſtationed in the Line?

A. The very ſternmoſt Ship of all; we were appointed to aſſiſt the *Revenge*.

Q. Relate

Q. Relate what you know of the *Royal Oak*.

A. I can ſay nothing more than what is in my Depoſition.

Q. Did ſhe ever aſſiſt the *Marlborough?*

A. Not that I ſaw.

Q. Was the *Royal Oak* in the Line?

A. I can't ſay, whether ſhe was or not.

Q. In what Poſition was the *Namur* from your Ship?

A. She was upon our Lee-Bow.

Q. And how was the ſternmoſt Ship of the Four from you?

A. The ſternmoſt Ship of the Four was upon our Weather-Bow.

Q. How were thoſe Four Ships, when the Admiral brought up to engage?

A. To Windward.

Q. Did you ſee the *Marlborough*'s Maſts go away?

A. No; I did not ſee they were gone till about Four o'Clock.

Q. How were the Four Ships then?

A. I did not obſerve them.

Q. From the Beginning of the Engagement, till ſome time afterwards, as long as you obſerved them, were they in that Poſition?

A. Yes.

Q. Did you ſee thoſe Four Ships engage?

A. I ſaw ſeveral of them fire; but I don't know which.

Q. Did you ſee any of the Enemy's Ships fire at them?

A. I believe, they did fire at them from the *Hercules*, and from the *Spaniſh* Ships coming up.

Q. Did you obſerve any of the Shot fall ſhort?

A. I did not obſerve any of the Shot, we were at ſo great a Diſtance.

Q. Do you, as a Seaman, believe, that our Ships were engaging the Enemy at a proper Diſtance to do Execution?

A. At the Diſtance I was, I did think they were; but I can't be certain, as to any thing of the Matter.

Then he withdrew.

Then the reſt of the Witneſſes, in Behalf of the Priſoner, were ordered to be called in.

Lieutenant *Richard Dorrill*, of the *Royal Oak*, called in, and ſworn.

Q. Acquaint the Court what you know about the *Royal Oak*.

A. About Eleven o'Clock we joined the Fleet, and run under the Admiral's Stern; we were hailed by Captain *Ruſſel*, who told us, our Station was between the *Rupert* and *Dunkirk*, where we went immediately: About Half an Hour afterwards, the Admiral made a Signal to engage; and, ſoon after that, bore down with the *Marlborough* to the *Real*; at which time I went down to my Quarters below, upon the Gun-deck: About Half an Hour afterwards, the Admiral and *Marlborough* engaged; we then going down to the Ships aſtern, Five Sail of them being about Three or Four Miles aſtern of the reſt; about Two o'Clock, we engaged the Second Ship aſtern of the *Real*, ſhe having fired ſeveral Shot at us, one of which ſtruck us between Wind and Water, amidſhips; at which Captain *Williams* gave us Orders to fire; which we did, and it laſted for about an Hour, or an Hour and Half, when ſhe bore away from us: We had ſeveral Shot ſtruck us in the Hull and Maſts, Rigging, and Sails: Some time after, the Four Ships aſtern coming up, we engaged them, and continued ſo, till about Four o'Clock; at which time we hauled our Wind.

Q. How near was you to that Ship you firſt engaged? Was you within Point-blank?

A. We were within little leſs than Half a Mile.

Q. Did you make uſe of Small-Arms?

A. Not that I know of.

Q. How long did you engage her?

A. About an Hour, or an Hour and Half.

Q. After you had done engaging that Ship, What did you do? Did you haul up?

A. Yes; and we lay inactive for about Half an Hour, till the other *Spaniſh* Ships aſtern came up.

Q. What did you do then?

A. As they came up, we bore down to them.

Q. Did you never endeavour to get into a Line with the *Marlborough?*

A. I can't ſay, that I ever obſerved the *Marlborough*.

Q. When you engaged the Second time, was you within Muſquet-Shot?

A. I believe, we never were.

Q. Was you never within Point-blank?

A. I can't ſay what Point-blank is; but the Enemy's Shot went through our Sides.

Q. What Diſtance was the ſingle Ship you engaged firſt, from the *Real?*

A. About Three Miles.

Q. What Diſtance was ſhe from the other Four Ships aſtern?

A. About a Mile.

Q. Was ſhe abreaſt of you, when you engaged her?

A. Yes; ſhe was abreaſt of us.

Q. After you left off Engaging, Did you not go upon Deck?

A. No; we were ſhifting Powder from the fore to the after Powder-Room; and I ſtaid below.

Q. How long after Admiral *Mathews* began to engage, did you begin to engage?

A. About an Hour.

Q. When you began to engage, Was the Admiral hauled off?

A. I can't tell; I did not obſerve the Admiral, and I know nothing of his Hauling off.

Q. Did you engage the Ship you firſt fired at, as near as the Admiral and *Marlborough* engaged?

A. I can't tell.

Q. Did

Q. Did you hear Captain *Williams* call to Captain *Ambroſe?*

A. No.

Q. Did you obſerve any Shot come through your Sides, any-where in your Quarters?

A. No.

Q. How far under Water was the Shot you received amidſhips, between Wind and Water?

A. About Two Foot.

Q. When you engaged the ſingle Ship, Had you no Aſſiſtance from any other Ship?

A. I can't tell; other Ships were firing, but I don't know at what.

Q. What Ships were neareſt to you?

A. The *Rupert* and *Dunkirk*.

Q. What Diſtance were they off?

A. I can't tell.

Q. Was any Ship of ours ever under your Lee-Quarter?

A. Not till the Evening.

Q. Did the Ship you firſt engaged fire at you, before you fired at her?

A. Yes.

Q. Did you then receive the Shot between Wind and Water amidſhips?

A. Yes; I am poſitive it was received there, before we fired.

Q. How far under Water was that Shot?

A. About Three or Four Inches.

Q. How far did the Shot bury itſelf?

A. I can't ſay.

Q. Do you remember what time of the Day you engaged thoſe Four Ships aſtern?

A. Between Three and Four o'Clock.

Q. Did you ſee any Ships to Windward of you then?

A. Yes; I ſaw Ships to Windward; but I don't know what Ships they were.

Q. What Diſtance was the Vice-Admiral then from you?

A. I can't tell.

Q. Did your Ship receive any Grape-ſhot, or Bar-ſhot?

A. Not that I know of.

Q. Had you any Men killed?

A. No.

Q. Had you any wounded?

A. Yes; we had Five wounded.

Q. What made you leave off engaging the Firſt Ship?

A. Becauſe ſhe bore away from us.

Q. Was ſhe diſabled?

A. No; I did not obſerve, that ſhe was.

Q. At what time did you engage the Four Sail?

A. Between Three and Four o'Clock.

Q. How long did you engage them?

A. About Half an Hour, or better.

Q. What was the Reaſon of your Hauling off?

A. I have often heard Captain *Williams* ſay, It was becauſe no other Ships came to his Aſſiſtance; and he had the Fire of Three Ships upon him.

Q. What Injury did you receive from the Fire of thoſe Three Ships?

A. I don't know any in particular; their Shot ſtruck our Ship, and went greatly over: There was one Shot in the Head of our Main-maſt.

Q. What Ship did that Shot come from?

A. It came from one of thoſe Ships.

Q. You ſay, The Admiral began to engage an Hour before you?

A. Yes.

Q. How came you not to begin ſooner?

A. Becauſe they were ſo far to Leeward, and aſtern, that we had no Ship to engage till then.

Q. How came you not to go to the Aſſiſtance of the *Marlborough?*

A. There were Three Ships between us and the *Marlborough*.

Q. But, as thoſe Ships were to Windward, Ought you not to have gone to her Aſſiſtance?

A. In my Opinion, we ought not, as thoſe Three Ships were between us.

Q. When you engaged the Headmoſt of thoſe Four Sail, Did you then obſerve the Sternmoſt of the Four?

A. Yes.

Q. Which was neareſt to you, the Ship you engaged, or the Sternmoſt of them?

A. The Ship we engaged.

Q. Did you never look at our Ships out of the Ports?

A. No; I did not obſerve them.

Q. From whence did you obſerve the Enemy's Four ſternmoſt Ships?

A. From the Gun-room Ports.

Q. Was the *Cambridge* ever near you?

A. I can't ſay; if ſhe was, it muſt have been in the Evening.

Q. In all the time you engaged thoſe Three Ships together, Did no other Ship fire at them but yourſelf?

A. I can't ſay; I did not obſerve any.

Q. How did you traverſe your Guns, or what Ships did you point them at?

A. At thoſe Four Ships, Three of which engaged us at once.

Q. During the Second Action you had with the Enemy, Had you any Shot through any Part of your Quarters?

A. No.

Q. When you fired, In what Poſition were your Guns? Was either the Bed, or the Quoin, taken out?

A. One of them was taken out; but I can't ſay which.

Q. Did you take both out?

A. No.

Priſoner aſked,

Q. Do you remember, after we firſt engaged, Did we bear down a Second time?

A. Yes, to thoſe Four Ships; I remember it very well.

Q. When we went down to thoſe Four

Ships, Would it have been prudent for us to have gone nearer?

A. No; I think it would not have been prudent.

Court aſked,

Q. For what Reaſon would it not have been prudent?

A. Becauſe, I think, we ſhould have been diſabled, as we had the Fire of Three Ships upon us.

Priſoner aſked,

Q. Do you remember, that there were Six Guns run over to Leeward?

A. Yes; I remember, when we were firſt bearing down, they were run over upon the Upper and Quarter-decks; but I don't know whether they were continued.

Q. Do you remember, that I ordered you to run the Weather-Guns out?

A. Yes.

Q. Do you remember my ſending down to you, to leave off Firing, when the Ship we firſt engaged bore away?

A. Yes.

Court aſked,

Q. When you was lying Half an Hour inactive, Did you not look about you then?

A. No; we were ſhifting Powder below.

Q. Don't you think it would have been more for the Service, when that Ship bore away, for you to have gone to the Aſſiſtance of the *Marlborough?*

A. No; I think not.

Q. Why?

A. Becauſe, I think, we did more Service by endeavouring to ſtop the Four Ships coming up.

Q. As there were Four, Could you not have done more by going to the Aſſiſtance of the *Marlborough*, than by ſtaying to engage them?

A. After we had hauled off, it was too late to have gone to the *Marlborough*'s Aſſiſtance.

Q. Why did you not go to her Aſſiſtance at firſt?

A. Becauſe there were Three Ships ahead between her and us.

Q. When you hauled off from the Three Ships, for want of Support, Where did they ſeem to be going?

A. To cloſe with their Admiral.

Q. When they did ſo, Would they not have been nearer the *Marlborough?*

A. Yes.

Q. Did you engage the Three Ships before or after the *Marlborough*'s Maſts were gone?

A. I believe, before; but I can't tell; for I did not obſerve the *Marlborough.*

Q. At what time did you engage them?

A. It was after Three o'Clock.

Q. Had you any Glaſs; or, How do you know it was after Three o'Clock?

A. Only by Gueſs.

Q. Do you think, as an Officer, that it was Captain *Williams*'s Duty, after the Firſt Ship bore away, to have gone to the Aſſiſtance of the *Marlborough*, or to have lain in his Station to receive the Four Ships coming up?

A. I think he ought to have remained in his Station, to have received thoſe Four Ships.

Priſoner aſked,

Q. Did you obſerve, or hear, that I behaved, as though I would have avoided the Enemy?

A. No; I never did: I obſerved quite the reverſe.

Q. Did you hear me ſay any thing about going near the Ships, before we fired?

A. Yes; juſt before I went down to my Quarters, I heard you ſay, That you would not fire a Shot, till you came within Piſtol-ſhot.

Court aſked,

Q. I aſk you as an Officer, Do you think you was ſufficiently near the Firſt Ship you engaged, ſo as to engage her as a Man of War ought to have done?

A. I think not.

Q. What was the Reaſon you was not?

A. I don't know.

Q. What Obſtruction was there to prevent it?

A. I can't tell Captain *Williams*'s Reaſons.

Q. Was you in a Line with the *Marlborough?*

A. I can't ſay.

Then he withdrew.

Nicholas Edwards, Cockſwain of the *Royal Oak*, was called in, and ſworn.

His Depoſition was read.

Nicholas Edwards, *late Cockſwain aboard the Ship, ſworn, depoſeth*;

THAT, in the Engagement aforeſaid, he was quartered on the Poop: That we bore away with Topſails and Foreſail, and Main-buntlines overhauled, as ſoon as the *Rupert* did, which was juſt after the Admiral made Sail, and ran down towards the Enemy; did not bring to until the *Rupert* had done ſo; and, in ſo doing, we ſhot ſo near her, that we were obliged to lay all our Topſails aback, which brought us upon her Lee-Quarter; and, I think, we were never once to Windward of her all that Afternoon: We were about Half a Mile to Windward of the Enemy then, before we brought to. One of the *Spaniſh* Ships, which we believed to carry Sixty Guns, or more, had fired, and hit us with ſeveral Shot; and ſeveral went a good Diſtance over us: Her we engaged about an Hour, before ſhe bore away, out of Gun-ſhot. Upon our ſhooting pretty near the *Rupert*, Captain *Williams* hailed her from the Larboard-ſide of the Quarter-deck; when Captain *Ambroſe* came into his Stern-Gallery, and aſked what he ſaid? Captain *Williams* aſked him, If he did not think we were too far off, and if it would not be proper to bear down upon the Enemy? Captain *Ambroſe* aſked, What do you ſay? Our Captain repeated what he had ſaid before, or

Words

Words to that Effect; and called to the People, quartered on the Forecaſtle, to tell him ſo, when he went out of his Gallery without any Anſwer that I heard: Upon this we ported our Helm, and bore away; when Four Ships coming up aſtern began to be pretty near us: We brought to again; ſoon after which the Headmoſt began to fire on us, and ſtruck us often: The Captain ordered us to fire at her again, which we did for more than an Hour; and, as they came up with us pretty faſt, they all fired at us pretty ſmartly. There was no Ship aſtern of us of the Vice-Admiral's Diviſion, but was more than Two Miles diſtant, and at leaſt Three Points on our Weather-Quarter. Captain *Williams* went very often to ſee if any of theſe Ships were coming towards us; and ſtamped with his Foot, and ſaid, What can them Ships be doing? Is the Devil in them? Now is the time to deſtroy them if they would but come up; and was in a very great Paſſion that no one would come to aſſiſt us. At laſt, he ordered the Jib and Main-topmaſt-ſtayſail to be hoiſted (as we were under our Topſails); and we ſhot a little nearer the *Rupert*, who was upon our Weather-Bow; and, as the Enemy had almoſt all their Sails ſet, and edged away, they ſoon got out of Gun-ſhot of us; I mean Point-blank. Very ſoon after, we went under the *Marlborough*'s Stern, who gave us Three Cheers, which we returned. Our Helm was ordered aweather again: Some time after, the *Cambridge* and *Dunkirk* were coming up with us; and, at Half paſt Four, they began to fire at theſe Ships: We ſaw the Admiral with a White Flag at Fore-topmaſt head, the Red Flag hauled down: He ſet his Foreſail, and wore; the *Rupert* and we did the ſame; ſoon after which we began to fire on the *Real*, who was going away Large very near us; and, as we paſſed by, we fired very ſmartly at the reſt of the *Spaniſh* Ships, as they did at us, until it was dark. He ſays, the Captain behaved as well as Man could do, and did every thing in his Power to annoy the Enemy, encouraging the Men, who were all pleaſed and well ſatisfied with his Behaviour, and wiſhed for nothing more than an Opportunity to juſtify it.

Nicholas Edwards.

Sworn by me,
Geo. Atkins, Deputy Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Poop.

Q. How long was it before you began to engage, after the Admiral began?

A. About Half an Hour, or a little more.

Q. Why did you not engage ſooner?

A. We engaged as ſoon as we could get down near enough to the Enemy to engage.

Q. Did you bear away in a Line abreaſt with the Admiral?

A. Yes; we bore away after the Admiral as ſoon as the *Rupert* did; but the Reaſon we did not begin to engage ſo ſoon as the Admiral did, was, becauſe the Ship we engaged was farther from us than the *Real* was from the Admiral.

Q. After the *Rupert* bore away, and you bore away with her, Did you at any time, before the Admiral brought up to engage, form a Line abreaſt with the Admiral?

A. We had not formed a Line abreaſt with the Admiral, when he brought up.

Q. Was you ever in a Line with the Admiral, or *Marlborough*?

A. Yes; when we firſt fired, I looked, and ſaw the Admiral right ahead.

Q. Was the Admiral then engaging?

A. Yes.

Q. Was his Head then the ſame Way as yours?

A. Yes.

Q. How did the *Marlborough* bear from you then?

A. When we firſt brought up to engage, the *Namur* was right ahead, and the *Marlborough* away with our Starboard-Foreſhrouds; and, when the *Spaniſh* Ship bore away, we edged after her, till we brought the *Marlborough* right ahead.

Q. At what time was that?

A. Between One and Two o'Clock, I believe.—After we went down, the *Rupert* was too near us; and we were obliged to lay all aback to keep clear of her.

Q. How near did you engage the Firſt Ship?

A. Within about Half a Mile.

Q. What hindered you from getting within Muſquet-ſhot of her?

A. I can't tell.

Q. If you had gone within Muſquet-ſhot, Should you have been to Leeward of the *Marlborough*?

A. Yes.

Q. What Diſtance might the *Rupert* be from you, when you firſt engaged?

A. About a Cable's Length at firſt, and afterwards about a Cable and an Half.

Q. Was ſhe not capable of aſſiſting you?

A. Yes, if ſhe had bore down.

Q. Did you obſerve, when you brought the *Marlborough* right ahead, in what Poſition ſhe was then?

A. She was right ahead; but ſhe luffed up a little more than we, and her Maſts were a little open.

Q. At the time you ſay the *Marlborough* was right ahead of you, Did you engage the Ship you fired at, as near as the *Marlborough* did the *Real*?

A. I can't ſay we did; I believe, not.

Q. Did you obſerve any of our Ships between you and the *Marlborough*, at the time her Maſts were gone?

A. No; not one.

Q. Did you obſerve the *Marlborough*'s Maſts gone?

A. Not

A. Not till after we had done engaging the First time.

Q. When you engaged the First time, Was there any Ship between you and the *Marlborough*?

A. No; they were a little to Windward.

Q. When you obſerved the *Marlborough*'s Maſts gone, Did you obſerve the Ships, to Windward, to be more to Windward than they were the First time?

A. No; I can't ſay I took any Notice of them.

Q. Do you remember being engaged with Three of thoſe *Spaniſh* Ships, coming up?

A. Yes.

Q. Do you remember, while you was engaged with them, that any other Ship, of the *Britiſh* Squadron, came up, and fired at any of thoſe Ships, before you had done engaging them?

A. I remember the *Cambridge* came up; but we were then ſhot up pretty nigh the *Rupert*.

Q. At what time was that?

A. About Half paſt Four o'Clock.

Q. How long did the *Cambridge* fire?

A. Two Broadſides, at moſt.

Q. What was the Reaſon, do you think, that the *Cambridge* did not fire longer?

A. Becauſe, then, the Admiral hauled down the Signal for Engaging, and hoiſted the White Flag, and wore.

Q. When you engaged the Firſt Ship, Did you ever obſerve the Enemy's Four Ships coming up aſtern?

A. Yes.

Q. In what manner did they come up? Did they come up as if they intended to weather you?

A. I am ſure they could have weathered us, if they had hauled their Wind, when we were engaging the Firſt Ship.

Q. How far was the *Rupert*, then, to Windward of you?

A. About a Cable, or a Cable and an Half, upon our Weather-Bow; or it might be Two Cables.

Q. When the *Cambridge* came up, and fired thoſe Two Broadſides, How far had you then ſhot from the *Cambridge*?

A. About Half a Mile.

Q. How long had you then ceaſed Firing?

A. About a Quarter of an Hour.

Q. Had you any Small-Arms upon the Poop?

A. Yes; we were all quartered at the Small-Arms—I was quartered at them.

Q. Did you fire any Small-Arms?

A. I fired One Muſquet, which did not reach.

Q. How much did you haul off, after engaging the Firſt Ship?

A. About Two Cables Length.

Q. How long did you then lie inactive?

A. About Half an Hour.

Q. After lying inactive Half an Hour, How far did you bear down again?

A. About Four Cables Length.

Q. Then you muſt, by that means, have been to Leeward of the *Marlborough*.

A. Yes; we were to Leeward of her, when we engaged the Second time.

Q. Did you obſerve the Sternmoſt of the Enemy's Ships to be in your Wake?

A. Yes; and ſhe luffed up, to bring her Chace-Guns to bear upon our Stern.

Q. At what Diſtance was that ſternmoſt Ship, then, from you?

A. About Half a Mile.

Q. How far was the Vice-Admiral, then, from you?

A. About a Mile and an Half, or Two Miles; but the Van of his Diviſion was pretty near us.

Q. Was the *Cambridge*, or *Dunkirk*, within Gun-ſhot of the Enemy then?

A. I believe the *Cambridge* was; but not the *Dunkirk*.

Q. Was the *Rupert* within Gun-ſhot of the Enemy?

A. I believe ſome random Shot went over her; but ſhe was not near ſo nigh as we.

Q. Did the *Rupert* give you no Aſſiſtance at all, when you engaged thoſe Ships?

A. She fired; but moſt of her Shot fell ſhort.

Q. Did you obſerve, how many of thoſe Four Ships fired at you, at once?

A. Yes; Three.

Q. Did you obſerve any of their Shot go over you?

A. Yes; a great many.

Q. Did any go through your Sides?

A. Yes; One went through, upon the Upper-deck; and One upon the Quarter-deck.

Q. During that time, Did you obſerve Captain *Williams* ſay any thing, with relation to the Ships not coming down, to his Aſſiſtance?

A. Yes; he wondered, no Ships came down.

Q. What Ships do you think he meant?

A. The Ships of Mr. *Leſtock*'s Diviſion.

Q. Did he mention what Ships?

A. No; he ſaid, He wondered no Ships came down, to his Aſſiſtance.

Q. Were the *Rupert*, and *Eſſex*, near you?

A. Yes.

Then he withdrew.

William Ferris, Maſter at Arms on board the *Royal Oak*, called in, and ſworn.

His Depoſition read.

William Ferris, *Maſter at Arms aboard the ſaid Ship, ſworn, depoſeth*;

THAT, during the Engagement aforeſaid, he was quartered on the Forecaſtle. When the Admiral made the Signal to engage, we bore away to the Enemy with the *Rupert*, and did not bring to again, till after ſhe had brought to, and, in doing of which, were ſo near her, were obliged to lay all aback, which brought us upon her Lee-Quarter. When we began to engage,

a Ship

a Ship had hit us ſeveral Shot, in the Hull, Maſts, and Sails; we ſuppoſed her to be about Sixty Guns; who, bearing away, ſoon got out of Shot of us: And, on our ſhooting pretty near the *Rupert*, Captain *Williams* hailed her; and Captain *Ambroſe* anſwered, *Royal Oak*, What do you ſay? Captain *Williams* asked, If he did not think it proper to bear down nearer to the Enemy? ſaying, He thought we were too far off: That, if he did not bear down, he might as well throw his Powder and Shot out of the Ports, as to fire at that Diſtance; which was repeated, by the Captain's Order, by our Maſter's Mate, or Boatſwain, from the Forecaſtle; but I heard no Anſwer: But Captain *Ambroſe* turned ſhort round, and went out of his Gallery. Near about that time, I ſaw Mr. *Wilſon* go upon the Quarter-deck; and, very ſoon after, we bore down, for ſome time; when Four of the Enemy's Ships, coming up, began to fire; which we returned, and continued ſo for about an Hour and Half. They, ſtill nearing us, hit us very often. There was no Ship aſtern of us nearer than the *Dunkirk*; and ſhe about Two Mile diſtant, on our Weather-Quarter; the *Rupert* a good Diſtance, on our Weather-Bow; and the *Namur* right ahead. We hoiſted our Jib, and Main-topmaſt-Stayſail, to ſhoot us nearer the *Rupert*. Some time after, the *Marlborough* went juſt ahead of us, and aſtern of the *Rupert*, and gave us Three Cheers, which we returned: And as we had been to Leeward of the *Rupert* all the Afternoon, continued ſo; and did not ſet the Foreſail afterwards, until the Admiral hauled down the Signal for the Line, and wore: Then we wore likewiſe after the *Rupert*, and engaged the Enemy on the other Tack, the *Real* being the nearmoſt Ship to us, of the Enemy. When we wore, the *Eſſex* was under our Bow; upon which, Captain *Williams* called to Captain *Norris*, to make more Sail, to get out of our Way, into his Station. The Captain encouraged the Men, and behaved with all the Calmneſs, and Reſolution it was poſſible for Man to do; only ſeeming vexed he could do no more; ſeveral times expreſſing himſelf, What did they mean, by not bearing down?

William Ferris.

Sworn by me,
Geo. Atkins, Deputy Ju. Adv.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Forecaſtle.

Q. How long did you engage the Firſt Ship, before ſhe bore away?

A. The beſt Part of an Hour.

Q. Was you within Point-blank?

A. I can't tell what Point-blank is; but her Shot hit us, and went over us, a great way.

Q. Was you within Muſquet-ſhot?

A. I can't ſay; for we never fired our Small-Arms.

Q. What did you do, after you had done engaging that Ship?

A. We hauled up for the *Rupert*; and our Captain went to the Larboard-ſide of the Quarter-deck, and hailed Captain *Ambroſe*, and aſked, If he did not think proper to bear down nearer; for he might as well throw his Powder and Shot out of the Ports, as fire at that Diſtance.

Q. How near was you to the *Rupert* then?

A. About Two Ships Length, when we hailed her.

Q. What became of you, after you hailed the *Rupert*?

A. Captain *Ambroſe* did not make any Anſwer, as I heard, at all: But then the Captain called to the Forecaſtle to hail; which we did: Captain *Ambroſe* asked, *Royal Oaks*, What do you ſay? Our Captain repeated the ſame Words. Then Captain *Ambroſe* turned ſhort about, and went out of the Gallery. About the ſame time, Lieutenant *Wilſon* came upon the Quarter-deck, and ſpoke to the Captain; and, a ſhort time after, we bore down to the Four Ships.

Q. Did the *Rupert* bear down with you?

A. I did not obſerve her.

Q. How long have you been at Sea?

A. I was at Sea Twenty-eight Years ago, with Sir *George Byng*.

Q. When you bore down, the Second time, How long did you then engage the Enemy?

A. About an Hour, or better.

Q. What became of the ſingle Ship you firſt engaged?

A. I can't well tell: But, I believe, ſhe ſhot ahead, and got into the Wake of the *Real*.

Q. Did you obſerve the *Cambridge*, at any time, come under your Lee-Quarter?

A. Yes.

Q. At what time?

A. It was towards the latter Part of the Engagement, between Four and Five o'Clock, after we had hauled off.

Q. Did ſhe engage?

A. I believe ſhe fired about a Couple of Broadſides.

Q. Did you ſee the Admiral, when you firſt began to engage?

A. Yes.

Q. How did the Admiral then bear from you?

A. Rather a little upon our Lee-Bow, when we firſt engaged.

Q. Was he then engaged?

A. Yes.

Q. How long was it, after you hauled off from the Three Ships you engaged, before the *Cambridge* came under your Lee-Quarter, and fired thoſe Two Broadſides?

A. It was ſome time; I can't ſay particularly.

Q. What Diſtance was you, from the *Cambridge*, when ſhe ſo engaged?

A About Half a Mile, or better, ahead, and to Windward, upon her Weather-Bow.

Q. How did the ſternmoſt Ship of the Enemy bear from you, when you hauled up?

A. She bore right in our Wake, after we hauled up: And I believe, the Shot in the Head of our Mainmaſt came from that Ship.

Q. Had you received ſo much Damage from thoſe Three Ships, as to make it neceſſary for you to haul off?

A. I can't ſay; I am not a Judge of the Damage.

Q. What did you believe was the Reaſon for your Hauling off?

A. For fear the Enemy ſhould double upon us, and bring us between Two Fires, as no Ships came down to our Aſſiſtance. I believe Two of them might have come on one Side of us, and Two on the other.

Q. Where was Mr. *Leſtock*'s Diviſion then?

A. A good Diſtance aſtern, and to Windward withal.

Q. Where was the *Cambridge* then?

A. She was not then come down—It was after we hauled off, that ſhe came down.

Q. When the *Cambridge* came down, and fired at the Three Ships you left, Could you not have gone down to aſſiſt the *Cambridge*, and engage thoſe Ships?

A. Yes; I believe we might: But, about that time, the Admiral hauled down the Signal for Battle, and hoiſted a White Flag at the Foretopmaſt-head, and wore immediately; and we did the ſame, in our Station, after the *Rupert*.

Q. Did you obſerve Captain *Williams* look as if he was afraid?

A. No; quite the contrary: He encouraged the Men greatly, and bid them take care to point their Shot ſo, as to hit; and ſo did Mr. *Wilſon:* I ſaw him in his Waiſtcoat, encouraging the Men. They both behaved as well as any Men alive.

Q. Did you hear the Men murmur at all?

A. No; not at Captain *Williams*'s Behaviour: But, when the Captain was confined, the Men all murmured at it, and wondered what he was confined for; and all of them wiſhed, they might have come Home, in Support of his Conduct.

Q. When you was fartheſt to Leeward, Did you obſerve how the Admiral bore from you?

A. Almoſt ahead; rather upon our Weather-Bow.

Q. Were there any Ships then in a Line between you and the *Marlborough?*

A. No, none—They were all to Windward, and never to Leeward, the whole Day.

Q. How did the *Marlborough* then bear from you?

A. She was then towing to Windward, with Two Boats ahead; and was rather upon our Lee-Bow.

Q. Did you ſee the *Marlborough*'s Maſts fall?

A. Yes.

Q. In what Situation was you, then, from her?

A. We were a little to Windward of her, and were then engaging the Three *Spaniſh* Ships; and had ſometimes the Fire of all Four upon us.

Q. What Diſtance was you from thoſe Four Ships at that time?

A. About a Quarter of a Mile; not much better, I am ſure: And, if they had fired at our Hull, as we did at theirs, they muſt have killed us a great many Men—But they fired very high.

Q. How many Men had you killed?

A. One killed, and Five wounded.

Q. Was it after you wore, that the *Marlborough* cheered you?

A. No; before.

Q. When you engaged the Enemy, the laſt time, What Diſtance was the *Marlborough* from you?

A. I am not a Judge.

Q. Did you fire any Small-Arms, during the Action?

A. No; never.

Then he withdrew.

Robert Spurway, Captain's Clerk of the *Royal Oak*, called in, and ſworn.

Q. Where was you quartered?

A. Upon the Poop.

Q. Relate what you know of the *Royal Oak*, during the Engagement.

A. We joined the Fleet about Eleven in the Forenoon, and run under Admiral *Mathews*'s Stern; when ſomebody called from the Admiral's Quarter-deck, and told Captain *Williams*, not to come on board; but to fall into his Station in the Line, between the *Rupert* and *Dunkirk:* Between Twelve and One, the Admiral and *Marlborough* bore down to the *Real*; and, very ſoon after, the *Rupert* bore down likewiſe, and we followed her; till one of the *Spaniſh* Ships came up, and began to fire at us ſeveral Shot; and ſome went over us; and ſome went through one Side, and ſtuck in the other Side. We then began to engage her, and were upon the *Rupert*'s Lee-Quarter; and continued ſo engaged the beſt Part of an Hour; the *Spaniſh* Ship we engaged, then bore away out of Gunſhot: We then went a little nigher the *Rupert*, Captain *Williams* hailed her, from the Larboard-ſide of the Quarter-deck; and I ſaw Captain *Ambroſe* come into the Stern-Gallery; but I don't remember, what paſs'd, it is ſo long ſince: We then bore down again to Leeward, as there were Four *Spaniſh* Ships coming up, and we began to engage the Headmoſt, and the reſt, as they came up; for they all fired at us: We continued engaging them a full Hour; we then went nigher the *Rupert* again, as we were intirely alone, and no Ship came to aſſiſt us: Very ſoon after that, I ſaw the Red Flag hauled down, on board the Admiral, and the White Flag hoiſted in its Place: When the Admiral wore, the *Rupert* ſhot ahead, and wore after him; and we followed the *Rupert*.

Q. When

Q. When you firſt began to engage, was you in a Line with the Admiral and *Marlborough?*

A. The *Marlborough*, I believe, was to Leeward of us; but, I believe, we were full as nigh to the Enemy, as the *Namur*, when we began to engage.

Q. Was you within Muſquet-ſhot?

A. No.

Q. How long did you engage the firſt Ship?

A. Better than Half an Hour.

Q. Why did you not continue to engage her longer?

A. Becauſe ſhe bore away.

Q. What did you then do?

A. We hauled nigher the *Rupert*.

Q. Did Captain *Williams* hail the *Rupert?*

A. Yes; I heard Captain *Williams* ſay, Ho, the *Rupert*, Ho, ho! And I ſaw Captain *Ambroſe* come into the Stern-Gallery; but what paſs'd further, I don't know.

Q. What Part of the Ship was you then in?

A. At my Quarters, upon the Poop.

Q. Did you ever attempt to edge away to the *Marlborough*, after the *Namur* hauled off?

A. No: We edged nearer to the *Spaniſh* Ships.

Q. How far was you from the *Marlborough?*

A. About Two Miles, or better.

Q. Were there any Ships between you and the *Marlborough?*

A. Yes; the *Dorſetſhire*, *Eſſex*, and *Rupert*.

Q. Were they to Windward?

A. The *Rupert* was upon our Weather-Bow; the *Eſſex*, farther to Windward; I can't ſay, that I ſaw the *Dorſetſhire*.

Q. Did you ſee the *Cambridge* at any time?

A. Yes; after Four o'Clock.

Q. Had you left off Engaging then?

A. Yes.

Q. Did you obſerve the *Cambridge* fire?

A. Yes.

Q. How many Broadſides?

A. I can't ſay; ſhe was not long engaged.

Q. What Diſtance was you then from her?

A. About a Quarter of a Mile.

Q. Did ſhe begin to engage, before you hauled up?

A. No.

Q. Was ſhe upon your Weather, or Lee-Quarter?

A. She was neareſt right aſtern.

Q. Did you ſee the *Marlborough*, when her Maſts went away?

A. No; I ſaw her juſt after.

Q. Was your Ship then to Leeward, or to Windward, of her?

A. I believe, the *Marlborough* was then to Leeward of us.

Q. Were there any Ships in a right Line between you and the *Marlborough*, after you obſerved her Maſts were gone?

A. I can't ſay, whether there were, or not; I only know, that the *Rupert* was upon our Weather-Bow; and ſometimes I ſaw the *Eſſex* to Windward of her.

Q. At the time you ſaw the *Marlborough*'s Maſts were gone, Had you left off Firing?

A. No: We were then engaging the Four Ships.

Q. How long did you engage, after you ſaw the *Marlborough*'s Maſts were gone?

A. A ſmall time; I believe, it was about Four o'Clock, when I ſaw her Maſts gone; and it was between Four and Five, when we left off.

Q. What time did the Admiral wear?

A. Between Four and Five.

Q. When you left off engaging thoſe Ships, and you ſaw the *Marlborough*'s Maſts were gone; Which Way did thoſe Four Ships ſtand?

A. They edged away, ſeemingly, to Leeward of the *Real*.

Q. What became of the firſt Ship you engaged?

A. I can't tell; I did not obſerve her afterwards.

Q. Did you obſerve any Ship aſtern of the *Real*, beſides the Ship you engaged?

A. Yes; the *Hercules* was cloſe aſtern of the *Real*; and there was a great Opening between her, and the Ship we engaged.

Q. Did you ever obſerve, whether that Ship was diſabled?

A. I did not obſerve.

Q. Recollect: Did the Ship you engaged, go towards the *Hercules?*

A. I did not obſerve, what became of her.

Q. Did ſhe ſink?

A. I did not ſee her ſink.

Q. Do you remember the firſt of the Engagement?

A. Yes.

Q. How long had the Admiral engaged, before you began to engage?

A. About Half an Hour.

Q. Was not the *Namur* to Windward of the *Marlborough*, when you began to engage?

A. Yes; ſhe was.

Q. Had not the *Namur* hauled off, when you began to engage, more to Windward, than ſhe was, when ſhe firſt began to engage?

A. I did not obſerve, that ſhe had then hauled off.

Q. How did the *Namur* bear from you, when you began to engage?

A. Neareſt right ahead; and the *Marlborough* upon our Lee-Bow.

Q. What Diſtance, aſtern of the *Hercules*, might that Ship be, which you firſt engaged?

A. I can't ſay; there was a great Opening.

Q. Was the Opening greater between that Ship and the *Hercules*, or between that Ship and the Four Ships aſtern of her?

A. I can't ſay.

Q. Did you obſerve, how the Sternmoſt of the Four *Spaniſh* Ships bore from you, when you engaged them?

A. Right

A. Right aſtern.

Q. At what Diſtance?

A. About a Quarter of a Mile from us.

Q. Was ſhe then as near, or nearer to you, than the Headmoſt of thoſe Ships were?

A. I believe, about the ſame Diſtance; none of them were leſs than a Quarter of a Mile from us.

Q. From what Ship, do you imagine, the Shot in your Main-maſt came?

A. I think, from the ſternmoſt Ship.

Q. Did you obſerve any Shot fly over you, from that ſternmoſt Ship?

A. Yes; ſeveral came over the Taffarel.

Q. Was you hauling off, when the ſternmoſt Ship was in your Wake?

A. I believe we were engaging then.

Q. When your Ship was engaged with thoſe Ships, Was ſhe in a Line with the *Marlborough*?

A. The *Marlborough* was to Leeward of us then.

Q. When you ſaw the ſternmoſt Ship in your Wake, did you ever obſerve her to haul up, to bring her Bow-Chace to bear upon you?

A. I can't tell, I am not a Seaman.

Q. Did you hear the People upon your Poop ſay, The Sternmoſt will weather us?

A. No; I heard them ſay, ſhe was raking us.

Q. When you firſt engaged the ſingle Ship, How many were aſtern of you?

A. Four: I believe the *Hercules* made Six in all, aſtern of the *Real*.

Q. What became of that Ship you firſt engaged?

A. I can't tell; I did not take Notice of her.

Q. Did ſhe ever come into the Line again?

A. I can't ſay: If ſhe did, I ſhould not have known her.

Q. How long do you think the Sternmoſt of the *Spaniſh* Ships continued in your Wake?

A. A very little time: It was towards the latter Part of the Action.

Q. Was ſhe in your Wake before you hauled up? Or was it your Hauling up brought her into your Wake?

A. She was in our Wake before we hauled up.

Q. When you was cheered by the *Marlborough*, How came you then near her?

A. We were following the *Rupert*, in order to wear.

Q. What Sort of Shot do you imagine it was, that ſtruck the Head of your Main-maſt?

A. I can't tell; for I never ſaw it.

Q. Did the Shot damnify the Maſt, ſo as to make it unfit for Service?

A. No.

Then he withdrew.

Solomon Hawks, Maſter's Mate on board the *Royal Oak*, called in, and ſworn.

His Depoſition read.

Solomon Hawks, *Maſter's Mate aboard the aforeſaid Ship, ſworn the Third of* September, 1745. *depoſeth*;

THAT, during the Engagement aforeſaid, he was quartered from the Main-maſt aft on the Upper-deck: About One or Two o'Clock, we bore away with the *Rupert*, under our Top-ſails and Foreſail (which was immediately after the Admiral did, when he bore down to engage the Enemy); and did not bring to, till the *Rupert* did, and then ſomething on her Lee-Quarter; and believe, we never once were more to Windward of the Enemy: Before we brought to, one of the *Spaniſh* Ships, about 60 Guns, had fired at us, and hit us ſeveral times, whom we engaged about an Hour, when ſhe edged away; and, I believe, was out of point-blank Shot. Captain *Williams* then called to me to leave off Firing, and to tell Lieutenant *Dorell*, the Officer on the Lower-deck, to do the ſame; which I immediately did, and went and ſat on the Larboard-Gangway, where I ſaw Captain *Williams* looking at the Ships that were on the Weather-Quarter, and ſtamping on the Deck ſaid, Oons, What are them Ships about? Why don't they bear down? Then being ſhot pretty near the *Rupert*, Captain *Williams* hailed her twice; and then was anſwered by Captain *Ambroſe*, who was come into his Stern-Gallery, asked, What he ſaid? Captain *Williams* replied, Are we not too far off? Don't you think it would be proper to bear down? or Words to that Effect. Captain *Ambroſe* then aſked, What do you ſay? Captain *Williams* repeated the ſame Words, or to the ſame Effect; on which he went in from the Gallery, without making any Anſwer, that I heard. I heard Captain *Williams* call to put the Helm aweather; with Intent, as I thought, to bear down. So I immediately went to my Quarters. Soon after, we brought to again, there being Four Ships of the Enemy coming up very faſt, with moſt of their Sail ſet, and began to fire at us, as they came up, until, they having ſtruck us often, Orders were given to fire again; and we engaged for an Hour, at leaſt, till they ſhattered us very much; we then receiving the Fire of Four Ships. Orders were given to hoiſt the Jib, and Main-topmaſt-ſtayſail; there being no Ship of Mr. *Leſtock*'s Diviſion, nearer than Two Mile, and wide on our Weather-Quarter: This Sail neared us to the *Rupert*, who was then on our Weather-Bow; and the Enemy was near out of Gun-ſhot: Soon after, we went under the *Marlborough*'s Stern, and they gave us Three Cheers; which we returned. I believe, juſt after the *Dunkirk* and *Cambridge* ſhot up on our Lee-Quarter, and fired ſmartly at the Enemy, ſoon after we wore; and, as we paſt the *Real*, and the Ships aſtern of her, we fired at them, and they at us, till it was dark, and we left off. During the Action, I ſometimes ſaw, and ſometimes heard, Captain *Williams* ſtamp on the Deck, and ſhew as much Concern at the Ships not coming up, as could be; but never perceived the leaſt Sign of Cowardice

ardice in him; but really he behaved, in my Opinion, with as much Bravery as any Man in the Fleet; and, I believe, nothing troubled him ſo much, as that he could not have the Opportunity of ſhewing it more, without diſabling his Ship, by bearing down to Four Sail of the Enemy, without Aſſiſtance, or Likelihood of any: And I farther beg Leave to affirm, That I have heard moſt of our Ship's Company ſay, that were quartered in Sight, that Captain *Williams* behaved with a great deal of Conduct and Courage; and were they all preſent, I believe, would convince the World how much he has been wronged, and gain him the Character he juſtly deſerves.

Solomon Hawks.

Sworn by me,
Geo. Atkins, Deputy Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Upper-deck, from the Main-maſt aft.

Q. What time did the Admiral begin to engage?

A. About One o'Clock.

Q. How long after did you begin?

A. About Half an Hour, or better.

Q. How came you to be ſo long, before you began?

A. The Rear of the Enemy's Fleet, and our Ships, were farther diſtant than the Centre was from the Enemy, and we were longer running down.

Q. How far was the Ship you firſt engaged, from the Headmoſt of the Four Ships?

A. I believe, Two Miles.

Q. How far was you diſtant from the Enemy, when you began to engage?

A. About Half a Mile.

Q. What was your Reaſon for not going down nearer than Half a Mile, when you firſt began?

A. The *Rupert*, which was our leading Ship, had brought to; and the Enemy had fired at us; and her Shot ſtruck us, and flew over us.

Q. Could you not have gone nearer?

A. Yes.

Q. Was you within Reach of Small-Arms?

A. I believe not.

Q. If you had gone down within Reach of Small-Arms, Should you not have been to Leeward of the *Marlborough?*

A. I can't ſay.

Q. How far was you to Windward of the *Marlborough*, when you firſt began to engage?

A. I can't ſay; I did not obſerve the *Marlborough*, or the *Namur*, at that time.

Q. Do you know of any material Ropes being ſhot about the Main-maſt?

A. No; nothing material.

Q. Did you point any Guns yourſelf?

A. Yes.

Q. Was you within Point-blank?

A. As to Point-blank, I can't ſay; but the Enemy's Shot went through us, and a great way over us.

Q. In what Poſition did you lay the Guns?

A. The Metal was a little lowered; the Quoin being ſometimes hauled almoſt out, ſo as to lay the Guns upon a Level, becauſe the Ship heeled ſomething.

Q. When the firſt *Spaniſh* Ship bore away, how did ſhe go?

A. She bore away Two Points from us.

Q. What became of her?

A. I don't know where ſhe went.

Q. What Sail had ſhe, when ſhe went off?

A. Her Topſails, Foreſail, and Top-gallant-ſails, were ſet.

Q. Do you think, if you had bore down more to Leeward, before you brought to, that the Enemy could not have got betwixt you and the *Rupert?*

A. I believe they might.

Q. Did the *Rupert* fire?

A. I did not obſerve; I could ſee but accidentally through the Port before the Cheſs-tree.

Q. Had you any Men killed?

A. No.

Q. Did any Shot come in near your Quarters?

A. One came in through the Side, before the Main-chains, and took off a Man's Leg, and went through the Port on the other Side.

Q. Did you engage the ſingle Ship, or the Four Ships neareſt?

A. The Four Ships were conſiderably nearer.

Q. How long did you engage thoſe Four Ships?

A. I am certain, we engaged them full an Hour.

Q. When you was engaging the Headmoſt, how was the Sternmoſt from you?

A. When the headmoſt Ship was upon our Beam, the Sternmoſt was Two Points upon our Lee-Quarter.

Q. At what Diſtance?

A. About a Mile and an Half.

Q. Was ſhe never nearer than that?

A. Yes; ſhe was once between a Quarter and Half a Mile.

Q. From what Ship did the Shot come, that was in the Head of your Main-maſt?

A. I apprehend, from the ſternmoſt Ship.

Q. When you received that Shot, which you apprehend to be from the Sternmoſt, How far diſtant was ſhe then?

A. Near Half a Mile.

Q. Can you be certain at what time you received that Shot?

A. No.

Q. What o'Clock was it, when you was neareſt thoſe Ships?

A. About Four o'Clock.

Q. Did you obſerve the *Cambridge* at that time?

A. No, I did not ſee the *Cambridge*, till after we hauled off towards the *Rupert*.

Q. What was the Reaſon of your Hauling off?

A. No Ship coming down, I imagine, Captain *Williams*'s Reaſon to have been, to get Succour from the *Rupert*, in caſe thoſe Ships ſhould weather him.

Then he withdrew.

John Williams, Midſhipman on board the *Royal Oak*, was called in, and ſworn.

His Depoſition read.

John Williams, *Midſhipman aboard the ſaid Ship, ſworn, depoſeth*;

THAT, during the Time of the Engagement aforeſaid, he was quartered to paſs the Word. About Half *P. M.* the Signal being made for Engaging, Admiral *Mathews* bore down towards the *Real*, at the ſame time we bore away with the *Rupert*, under our Topſails and Foreſail; and, ſoon after, ſhe brought to: So did we in her Wake, rather to Leeward of her, by laying our Topſail aback: We never was to Windward of her, all the time of the Action, but about Half a Mile to Windward of the Enemy, when a Sixty-Gun Ship fired, and hit us with ſeveral Shot, and others went a great Way over us; whom we engaged about an Hour, before ſhe bore away out of Gun-ſhot; then we ſhot ahead upon the *Rupert*: Captain *Williams* hailed her, from the Larboard-ſide of the Quarter-deck, and was anſwered, What do you ſay? Captain *Williams* asked the Perſon who anſwered our Hailing, If he did not think we were too far off; and did not think it would be proper to bear down upon the Enemy. He then asked again, What do you ſay? (I cannot ſwear who this Perſon was, whether Captain *Ambroſe* or ſomebody elſe) when our Captain repeated the ſame, or Words to that Effect; but had no other Anſwer. Then our Helm was put aport, and we bore away: When we ſaw Four Sail coming up aſtern, pretty near us, we brought to again: Soon the Headmoſt began to fire at us, and had ſtruck us ſeveral times; and the Captain ordered us to fire in Return, which we did for above an Hour; and, as the reſt came up pretty faſt, they all fired at us very ſmartly: There was no Ship aſtern of us nearer than the *Dunkirk*; and ſhe, at leaſt, Two Miles from us, and Three Points upon our Weather-Quarter. I ſaw Captain *Williams* ſeveral times go to Windward, and ſtamping with his Foot, ſaying, What can them Ships be about? Is the Devil in them? And was very much concerned to ſee no Ship coming to aſſiſt him: Then ordered the Jib and Main-topmaſt-ſtayſail to be hoiſted, and we ſhot a little nearer the *Rupert*, who was on our Weather-Bow: The Enemy's Ships, having all their Sail ſet, ſoon edged away, out of Gun ſhot. Soon after, we went under the *Marlborough*'s Stem, when ſhe gave us Three Cheers; which we returned: Our Helm was ordered aweather again, ſome time after the *Cambridge* and *Dunkirk* were coming up with us; and at Half paſt Four, or thereabouts, they began to fire at theſe Ships: Soon after, ſaw the Admiral, with a White Flag at Fore-topmaſt-head, the Red Flag down; he wore Ship; ſo did the *Rupert* ahead of us; and we followed cloſe to her, after we began to fire on the *Real*, who was going away Large, and very near us; and, as we paſſed by, we fired at all the reſt of the Ships aſtern, as they did at us, till it was dark: And, during the whole Time, no Captain could behave better than ours; for all his Trouble was, that he could not have more Opportunity for deſtroying the Enemy; which moſt of the Ship's Company would ſay the ſame, if here.

John Williams.

Sworn by me,
Geo. Atkins, Deputy Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. In the Lee-Gangway, to paſs the Word.

Q. What Diſtance was you from the Admiral, when you firſt began to engage?

A. About Two Miles.

Q. How did he then bear from you?

A. Right ahead, as near as I can gueſs.

Q. Had he left off Engaging?

A. No.

Q. How was the *Marlborough* then?

A. A little upon our Lee-Bow.

Q. What Sail had you ſet?

A. When we bore down, our Foreſail was down; and it was hauled up, when we engaged.

Q. Was your Foreſail up, when you ſaw the *Namur* ahead of you?

A. Yes.

Q. Was the *Marlborough* at that time in a Line with the *Namur?*

A. She was a ſmall Matter to Leeward of the *Namur*; I could ſee the *Namur* upon the *Marlborough*'s Weather-Bow.

Q. How long did you engage that Firſt Ship?

A. About an Hour.

Q. At what Diſtance?

A. About Half a Mile, or rather leſs.

Q. What became of her then?

A. She ſteered away for the *Hercules*'s Starboard-Quarter, as near I could gueſs.

Q. Did ſhe croud Sail?

A. Yes.

Q. What Diſtance was the *Hercules* to Leeward of the *Marlborough?*

A. I can't ſay; ſhe was upon our Starboard-Quarter.

Q. Did you ſee the *Hercules* at the time that Ship bore away from you?

A. Yes.

Q. When you began to engage, Was there any Ship in a Line between you and the *Marlborough?*

A. No.

Q. When you left off engaging that Ship, Was there any *Engliſh* Ship in a Line between you and the *Marlborough?*

A. No.

A. No.

Q. When you left off engaging the firſt Ship, Why did you not make Sail to cloſe with the *Marlborough*, to have aſſiſted her, when the *Hercules* was upon her Quarter?

A. I can't tell;—we muſt have gone through the Fire of our Ships to Windward; through the Fire of the *Rupert* and *Eſſex*.

Q. How could you be afraid of the *Rupert* or *Eſſex*'s Fire, when they were farther from the Enemy than you was, and you left off Firing, becauſe you was at too great a Diſtance?

A. I can't ſay.

Q. As you was in the Lee-Gangway, Did you obſerve any Shot fall ſhort, between your Ship and the Enemy?

A. I did not obſerve any fall ſhort.

Q. Did any go over you?

A. Yes; I ſaw a great many fly over.

Q. Did you obſerve the *Cambridge*, in any Part of that Day's Action, come up, and fire at the Three Ships you was engaged with?

A. Yes; I believe, ſhe fired about Two Broadſides.

Q. Was you then engaged?

A. No; we had left off Firing.

Q. How long had you left off Firing then?

A. I can't remember, it is ſo long ago.

Q. For what Reaſon did you leave off?

A. Becauſe no Ship was likely to come down to our Aſſiſtance.

Q. Did you, in all your Engagements, receive any Grape or Muſquet Shot, from the firſt to the laſt of your Engaging?

A. No.

Q. Could you have gone to the Aſſiſtance of the *Marlborough*, without continuing to engage thoſe Four *Spaniſh* Ships, as you went along?

A. I think we could not.

Q. How long had you left off Firing, when the *Cambridge* came up to engage?

A. I can't tell.

Q. After Hauling up from engaging the firſt Ship, How long did you lie inactive?

A. About Half an Hour.

Q. Though you was then inactive, Did any of the other Ships to Windward fire?

A. I ſaw the *Rupert* and *Eſſex* fire; and their Shot fell ſhort.

Q. Did you ſee the *Marlborough*'s Maſts fall?

A. No; I ſaw her after they were gone.

Q. At what time did you ſee her Maſts gone?

A. Between Four and Five o'Clock; but I can't be exact; I can't give any Account of Time.

Q. Where were the Enemy's Four Ships then?

A. We were then engaged with them.

Q. What Diſtance was you then from the *Marlborough*?

A. About Two Miles.

Q. How did ſhe then bear from you?

A. Upon our Lee-Bow.

Q. How was the *Namur*?

A. Upon our Weather-Bow.

Q. What Wind was there then?

A. Very little.

Q. If you had all your ſmall Sails ſet, What Way could you have made?

A. Not more than a Knot and an Half.

Q. How far was you from the Admiral?

A. About Two Miles.

Q. Could you not have got clear of the Enemy's Fire, if you had made all the Sail you could?

A. I can't ſay.

Q. Could you have got up to the Aſſiſtance of the *Marlborough*, before the Admiral made the Signal to leave off Chace?

A. No.

Q. When the Four *Spaniſh* Ships came up with you to engage, Did the Headmoſt ſhorten Sail to engage, or did ſhe continue the ſame Sail?

A. She continued the ſame Sail, to the beſt of my Remembrance.

Q. Did the Second ſhorten Sail, or the Third, when they came up with you?

A. No; they all continued the ſame Sail.

Q. How many of them had paſſed ahead of you, before you hauled off?

A. The Headmoſt was rather before our Beam; the Second, abreaſt of us; the Third, abaft our Beam; and the Fourth was aſtern of us.

Q. Did either the Ship aſtern, or that upon your Quarter, endeavour to keep their Luff, and to weather you?

A. I did not perceive that they did; they kept on the ſame Courſe as the Ship that led them.

Q. Was this Situation of thoſe Four Ships, as you have deſcribed them to be, before the *Cambridge* came down?

A. Yes; before ſhe came down.

Q. When the *Cambridge* came down, How far were they ſhot ahead?

A. I can't ſay; they were ſhot ſomething ahead, and to Leeward withal, going away Large; and, upon the *Cambridge*'s coming down, we put our Helm aweather, and bore down upon them again.

Q. Had the *Marlborough* then loſt her Maſts?

A. Yes.

Q. How long before?

A. I can't ſay.

Q. You ſay, You put your Helm aweather, to bear down, when the *Cambridge* came down, and fired Two Broadſides: What was your Intention in doing ſo?

A. To bear down, to engage thoſe Four Ships again: And we continued bearing down, till the Admiral wore Ship.

Q. Was the *Cambridge* then to Leeward of the *Royal Oak*?

A. Very little.

Q. Which

Q. Which Ship did the *Cambridge* ſeem to fire at?

A. The Third and Fourth, I believe.

Q. When the *Cambridge* engaged thoſe Two, How did ſhe bear from you?

A. Abaft our Beam.

Q. What time was it?

A. About Five o'Clock; it was almoſt dark.

Q. When you engaged thoſe Four *Spaniſh* Ships, Was you within Point-blank?

A. Their Shot went as far over us, as we were from the Enemy.

Q. Did you receive any Damage?

A. Yes; in our Maſt, Rigging, Hull, and Sails.

Q. How many Men had you killed?

A. One died ſoon after his Wounds, before I went off the Deck.

Q. Had you any of your Shrouds, or material Rigging, ſhot?

A. No.

Then he withdrew.

The Priſoner then acquainting the Court, That he had no more Witneſſes to produce, he was aſked, If he had any thing farther to offer in his Defence; or if he deſired any Time to adjuſt his Minutes, in order to make his Obſervations; that, if he did, they would allow him till the next Morning for that Purpoſe: The Priſoner ſaid, That he could not make his Defence to ſuch a Charge upon his Memory; but that he had wrote down what he had to ſay; and deſired, That it might be read by the Judge-Advocate: Which was allowed by the Court; and the Judge-Advocate read it accordingly; as follows:

AS this Tryal has been very long, and a great Number of Witneſſes have been examined, it would be too tedious for me to trouble you with Obſervations on what each Witneſs has ſaid; but it appears, by a great Number of the King's Evidences, as well as thoſe examined on my Behalf, that I did bear down as ſoon as poſſible after the Admiral, and engaged in the Line; and the Reaſon why I did not get down into my Station, and engage as ſoon as the Admiral did, was, becauſe he altered his Courſe, and bore down for the *Spaniſh* Admiral; which I had no Notion of, till I ſaw him do it; the Signal for the Line ahead being ſtill out; and I was much further from the Ship I firſt engaged, than the Admiral was from the *Real*; and there was no other Ship at firſt for me to engage, but the Ship that begun with me; who fired ſeveral Shot, which both hit me, and went over me, before I began to fire; and I fought that Ship for near an Hour, till ſhe ſheered off, out of Gun-ſhot: Which plainly ſhews, that ſo far I did my Duty as an Officer, by engaging the Ship which fell to my Lot, in the Station I was put into by the Admiral; and it would have been abſurd for me to have gone out of my Station, to have engaged the *Real* or *Hercules*, when there was a Ship proper for me to engage in my Station, and there was the Admiral, and Four Ships aſtern of him (beſides thoſe ahead of him), who had nothing to engage, but the *Real* and *Hercules*.

But as I have obſerved, pending my Tryal, many Queſtions have been aſked, Whether I could not have gone down to the *Marlborough*, and aſſiſted her;—it will be neceſſary for me to make ſome Obſervations in Anſwer to it.

In the firſt place, the XIIIth Article of the Fighting Inſtructions ſays, That, "As ſoon as "the Admiral ſhall hoiſt a Red Flag on the "Flag-ſtaff, at the Fore-topmaſt Head, and "fire a Gun, every Ship in the Fleet is to uſe "their utmoſt Endeavours to engage the Ene-"my, in the Order the Admiral has preſcribed "unto them; and ſtrictly to take care, not to "fire, before the Signal be given by the Ad-"miral."

The XXIId Article ſays, That, "If any of "the Ships in the Fleet are in Diſtreſs, and make "the Signal, which is a Weſt with the Jack "or Enſign, the next Ship to them is ſtrictly "required to relieve them."

And the XXIVth Article ſays, That "No "Ship in the Fleet ſhall leave his Station, upon "any Pretence whatſoever."

As to the XIIIth Article, I think, I punctually performed that, by engaging the Enemy, in the Order the Admiral had preſcribed; and, if I had gone up to the *Marlborough*, I ſhould have broke this Article, by leaving my Station.

And, as to the XXIId Article, The next Ship to the Ship in Diſtreſs, if ſhe makes the Signal, is to relieve her; but I was not the next Ship to the *Marlborough*; nor did ſhe make any Signal of Diſtreſs, neither did I know ſhe was in Diſtreſs, till her Maſts fell; at which time I was much more deeply engaged than ſhe was, having Four Ships upon me, and nobody to aſſiſt me; and if I had gone up to her, out of my Station, I had infallibly broke the XXIVth Article.

I alſo have obſerved, that it has been often aſked, Whether I was in a Line with the *Marlborough*: And, as to that, I don't conceive, that the *Marlborough* was to be any Guide to me, as to the Line, becauſe the Admiral's Flag was then flying; and I always apprehended, that I was to take the Line from the Admiral, let him be where he will, without regard to any Ship that may be to Leeward of him.

Soon after our Firſt Engagement (and before it appeared to me, that the *Marlborough* was in Diſtreſs), I perceived Four of the Enemy's Ships coming up aſtern, in order to join the *Spaniſh* Admiral; and I thought it indiſpenſably my Duty, to attack the Headmoſt of thoſe Four Ships, to prevent their Junction with the *Real*; not doubting, but I ſhould have had Aſſiſtance from the Vice-Admiral's Diviſion, as well as the Ships that were ahead of me: Therefore I bore down to meet them, and engaged them,

and

and was engaged with them, before, and at the Time the *Marlborough*'s Maſts fell, for a full Hour; but, having Four Ships upon me, and no Ships, either ahead or aſtern, coming to aſſiſt me, and the Sternmoſt of the Enemy being got into my Wake, and raking of me, and intended (as I apprehend), to weather me, which ſhe, and the next Ship ahead of her, might have done, and laid me between Two Fires, I thought it adviſeable for me to endeavour to get nearer the *Rupert*; which I did, merely for the Preſervation of his Majeſty's Ship, and not for any Damage I had received: And then it was full Four o'Clock; at which time the *Dorſetſhire* had bore down, and beat the *Real* from the *Marlborough*, and I went under the *Marlborough*'s Stern to Leeward, and between her and the Enemy, who were at that time on my Beam: And this can't be forgot, becauſe, as I paſſed her, ſhe gave me Three Cheers.

And I think, it can't be doubted, but that I was within point-blank Shot at the times I engaged, becauſe it is apparent, by a Number of Evidences, examined on both Sides, that the Enemy's Shot both hit me, and went over me, before I fired a Gun: And though ſome of the Evidences have been ſo hardy to ſwear, that I was not within Gun-ſhot of the Enemy when I fired (though moſt of them was Five or Six Miles off), yet, by the Damage I received from the Enemy's Shot, I make no Doubt, but this Honourable Court will be unanimouſly of Opinion, that I was as near the Enemy as I ought to be, in the Situation I was in: And, I hope, you will alſo think, that I did not draw back from the Enemy; but, on the contrary, that I did all in my Power to deſtroy and endamage them.

For which Reaſons, I can't but hope, from your Juſtice and Impartiality, you will agree, That I am in no ſort guilty of the Charge againſt me.

I preſume it has not ſlipt your Memories, that I joined the Fleet about an Hour or two before the Engagement began; and had no Line of Battle, or other Inſtructions, from the Admiral, than the printed ones.

The Priſoner being then aſked, If he had any thing farther to offer; he ſaid, I have been Forty-five Years in the Service, and ſerved with an untainted Character; and have always given Satisfaction to the Officers under whom I ſerved; which I have Reaſon to believe, by having received Favours from them: I apprehend, that I had, upon this Occaſion, done my Duty, agreeable to the printed Inſtructions, (which was all I had) and the Diſcipline of the Navy: And I hope the Court will be of Opinion, that, under the Circumſtances I was, I could not go nearer to the Enemy than I did; and that I did not ſhew the leaſt Fear or Apprehenſion; but that I was very much inclined to have gone nearer to them, if there had been any Appearance of my being aſſiſted: But that, finding no other Ship would aſſiſt me, when engaged with a ſuperior Force, I was obliged to haul away, in order to ſave his Majeſty's Ship, which muſt otherwiſe have fallen into the Hands of the Enemy. As to my not going to aſſiſt the *Marlborough*; as there were Three Ships between her and me, and I was engaged at the time ſhe was in Diſtreſs, I did not apprehend it to be my Duty to go down to her. If I have been guilty of any thing, it is what I cannot now recollect: And I am the more unable to recollect every Paſſage, as I received a great Wound before the Engagement, when my Main-maſt went away: But, having ſince conſidered my Behaviour during that Action, I have not been able to comprehend, that I ought, or could have done more than I did: And now, was it to be acted over again, I think that I ought to behave in the ſame Manner I then did. I am ſorry if I am miſtaken in my Opinion; but I ſubmit my Conduct to the Judgment of the Court; and doubt not having an equitable Determination upon the Matter. I have been Five Months impriſoned; which has been a very great Hardſhip.

The Marſhal was then told to remove the Priſoner: And the Audience withdrew.

Some of the Members then obſerved, That the Behaviour of Captain *Williams* and Captain *Ambroſe* ſeemed to be connected together; that it would be proper to go through both their Tryals, before the Court came to any Determination upon either; and therefore propoſed, that the Court would proceed upon Captain *Ambroſe*'s Tryal, before they came to any Reſolution upon Captain *Williams*: But the Majority of the Members ſeeming to be of a different Opinion, as the Civilians had given their Opinion in Captain *Burriſh*'s Caſe, that the Evidence upon one Tryal could not have any Weight upon another, the Motion was dropped: And then the Court proceeded to conſider the Evidence that had been given upon this Tryal: And, after deliberating ſome time upon it, the following Queſtion was propoſed; *viz.*

> When the *Royal Oak* firſt brought up to engage the Enemy, was ſhe in her Station in a Line with the Admiral, or as far to Leeward as the Admiral was, when he firſt began to engage?

A Debate aroſe, Whether the Words "or "as far to Leeward as the Admiral was, when he "firſt began to engage" ſhould ſtand as Part of the Queſtion, or not: And the Court dividing upon it; it was agreed (Twelve to Seven), that they ſhould not ſtand as Part of the Queſtion.

Then the Words "in her Station" were objected to: And, after ſome Debate, the Queſtion was put, Whether thoſe Words ſhould remain as Part of the Queſtion, or not: And the Court agreed (Eleven to Eight), That they ſhould not.

Then the Queſtion, after leaving out the Words, agreeable to the Two aforegoing Reſolutions,

ſolutions, was agreed to; and put as follows; *viz.*

When the *Royal Oak* firſt brought up to engage the Enemy, Was ſhe in a Line with the Admiral?"

And the Court agreed (Ten to Nine), That ſhe was not in a Line with the Admiral, when ſhe firſt brought up to engage.

Then the Court adjourned till To-morrow Morning, at Eight o'Clock.

Wedneſday, the 16th *October*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, as were Yeſterday.

The Minutes of Yeſterday were read: And then the Court proceeded to a further Conſideration of the Evidence: And, in the Courſe of their Deliberations thereupon, the following Queſtions were put; *viz.*

Is it the Opinion of the Court, That Captain *Williams* kept and continued, with the Ship under his Command, to Windward of the Line, during all, or the greateſt Part of the Engagement?

The Court agreed (Eleven to Eight), That he did continue to Windward of the Line, dureing the greateſt Part of the Engagement.

Is it the Opinion of the Court, That the *Royal Oak* was above the Diſtance of point-blank Shot from the Enemy, during all, or the greateſt Part of the Time ſhe was engaged?

The Court agreed (Sixteen to Three), That ſhe was not within a Diſtance to do proper Execution, during the greateſt Part of the Time ſhe was engaged.

Is it the Opinion of the Court, That the *Royal Oak* was within a Diſtance to do proper Execution, during any Part of the Engagement?

The Court were unanimouſly of Opinion, That when ſhe engaged the Four ſternmoſt *Spaniſh* Ships, and the Headmoſt of them was got abreaſt of the *Royal Oak*, ſhe was then engaged within a Diſtance to do proper Execution.

Is it the Opinion of the Court, That it was Captain *Williams*'s Duty, after the Firſt *Spaniſh* Ship he engaged bore away from him, to wait in a proper Station, to receive the Four *Spaniſh* Ships he ſaw coming up (Three of which he did afterwards engage)? Or ought he to have made Sail ahead of the Three Ships ſtationed between him and the *Marlborough* (but lying to Windward), to cloſe with the *Marlborough*, before ſhe loſt her Maſts?

The Court agreed (Fourteen to Five), That he ought not to have cloſed with the *Marlborough*, but to have waited in a proper Station, to have received the Four *Spaniſh* Ships.

Is it the Opinion of the Court, That Captain *Williams* ought to have made Sail ahead to cloſe with the *Marlborough*, when he obſerved her Maſts to be gone, though he was then engaged with Three of the Four ſternmoſt *Spaniſh* Ships?

The Court agreed (Thirteen to Six), That he ought not to have made Sail ahead, to cloſe with the *Marlborough*.

Is it the Opinion of the Court, That Captain *Williams* did his utmoſt to bear down upon, fight, or engage with the Enemy, as he ought to have done, from the Beginning of the Engagement, to the time of his engaging Three of the Four *Spaniſh* ſternmoſt Ships within a Diſtance to do proper Execution?

The Court agreed (Seventeen to Two), That he did not do his utmoſt within that Time.

Then the Court adjourned till To-morrow Morning, Eight o'Clock.

Thurſday, the 17th *October*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, as were Yeſterday.

The Minutes of the Two laſt Days were read.

The Court proceeded to a further Conſideration of the Evidence: And the following Queſtion being propoſed; *viz.*

Is it the Opinion of the Court, That Captain *Williams* did his utmoſt, to take, fire, kill, and endamage the Enemy, from the time of his engaging Three of the Four *Spaniſh* ſternmoſt Ships, to the time the Admiral hauled down the Signal for Battle?

It was propoſed, That the Words "agreeable to the Situation he was in" ſhould be added thereto, after the Word "utmoſt:" Which being objected to, the Court divided upon it: And it was agreed (Twelve to Seven), That thoſe Words ſhould be added to the Queſtion: And then the Queſtion was put, with that Addition, as follows; *viz.*

Is it the Opinion of the Court, That Captain *Williams* did his utmoſt, agreeable to the Situation he was in, to take, fire, kill, and endamage the Enemy, from the time of his engaging Three of the Four *Spaniſh* ſternmoſt Ships, to the time the Admiral hauled down the Signal for Battle?

And the Court agreed (Fourteen to Five), That, conſidering his Situation, he did his utmoſt within that Time.

Then the Court conſidered, under what Article Captain *Williams* fell: And they unanimouſly agreed, That he fell under Part of the Twelfth Article.

Then the following Queſtions were put; *viz.*

Does Captain *Williams* deſerve to be puniſhed with Death?

No; unanimouſly.

Does he deſerve Impriſonment?

No; unanimouſly.

Does he deſerve to be broke?

No; unanimouſly.

Shall he be acquitted?

No; unanimouſly.

What Sentence is the Court of Opinion he does deſerve?

The Court agreed unanimouſly, to adjudge him to be unfit to be employed any more in his Majeſty's Service at Sea; but humbly to recommend him to the Right Honourable the Lords Commiſſioners of the Admiralty, to be continued upon the Half-Pay, according to his Seniority.

Then the Sentence being drawn up by the Judge-Advocate, and approved and ſigned by the Court, the Priſoner was brought in, and all Parties admitted: And then the Judge-Advocate, by Direction of the Preſident, read the Sentence, as follows; *viz.*

At a Court-Martial, aſſembled on board his Majeſty's Ship the *London*, at *Chatham*, on the 23d *September*, 1745. and continued to be held, by Adjournment, on the 10th, 11th, 14th, 15th, 16th, and 17th of *October*, 1745:

PRESENT,

Sir *Chaloner Ogle*, Admiral of the *Blue*, and Commander in Chief of his Majeſty's Ships in the Rivers of *Thames* and *Medway*, and at the *Buoy of the Nore*, } Preſident;

Perry Mayne, Eſq; Rear-Admiral of the *Blue*,
Capt. *William Parry*,
James Rentone,
Tho. Limburner,
Sir *Will. Hewett*,
Joſeph Hamar,
Francis Geary,
John Pitman,
Hon. *Arch. Stuart*,
Thomas Smith, Eſq;
Capt. *William Chambers*,
Robert Allen,
Thomas Frankland,
Cha. Colby,
Sir *Charles Molloy*,
Robert Erſkine,
Edward Spragge,
John Orme;

All duly ſworn, according to Act of Parliament;

THE Court (in purſuance of an Order from the Right Honourable the Lords of the Admiralty to Sir *Chaloner Ogle*, dated 11th of *September*, 1745.) proceeded to inquire into the Conduct of Captain *Edmund Williams*, who commanded his Majeſty's Ship the *Royal Oak*, at the time of the late Engagement between his Majeſty's Fleet, and the Combined Fleets of *France* and *Spain*, off *Toulon*; and he was tried for the ſame, upon a Charge prepared againſt him by the Proſecutors in Behalf of the Crown, and laid before the Court by the Judge-Advocate: And the Court having ſtrictly examined all the Witneſſes produced, as well in Support of the Charge, as in the Behalf of the Party accuſed; and having thoroughly conſidered their Evidence; it appeared to the Court thereby,

That the *Royal Oak* bore down, ſoon after the *Namur* and *Marlborough*, and engaged a *Spaniſh* Ship (which was next to the *Hercules*, one of the *Spaniſh* Admiral's Seconds, and at a conſiderable Diſtance aſtern of her), till the *Spaniſh* Ship bore away to Leeward.

That the *Royal Oak* remained for ſome time afterwards out of Action, till the Headmoſt of the Four *Spaniſh* ſternmoſt Ships came up, when the *Royal Oak* bore down more to Leeward, and began to engage her, and alſo the Second and Third of thoſe Four, as they came up, till ſhe had the Fire of the Three Firſt, if not of all the Four, upon her; and then ſhe hauled off. That, ſoon after ſhe ſo hauled off, the Admiral wore to the Northward, and the *Royal Oak* did the like; and was again engaged with the *Spaniſh* Ships, in paſſing them, on the contrary Tack.

That, when the *Royal Oak* firſt brought up to engage, ſhe was not in a Line with the Admiral; and that ſhe continued to Windward of the Line, during the greateſt Part of the Engagement; and was not within a Diſtance to do proper Execution, during the greateſt Part of the Time ſhe was engaged: But, when the Four ſternmoſt *Spaniſh* Ships came up, and the Headmoſt of them was got abreaſt of her, ſhe was then engaged within a Diſtance to do proper Execution: And, conſidering the *Royal Oak*'s Situation, Captain *Williams* did his utmoſt, from that time, to annoy and endamage the Enemy.

That Captain *Williams* (by not being in a Line with the Admiral, when the *Royal Oak* firſt brought up to engage; and by continuing to Windward of the Line, during the greateſt Part of the Engagement, and not within a Diſtance to do proper Execution, during the greateſt Part of the Time he was engaged) failed in his Duty; and is guilty of Part of the Charge againſt him, as he did not do his utmoſt to bear down upon, fight, or engage the Enemy, from the time he began to engage, to the time of his engaging Three of the Four *Spaniſh* ſternmoſt Ships, within a Diſtance to do proper Execution: But, as to his being charged with not going to the Aſſiſtance of the *Namur* and *Marlborough*, the Court are of Opinion, That it was his Duty, after the Firſt *Spaniſh* Ship he engaged, bore away, to wait in a proper Station, to receive the Four *Spaniſh* Ships that were coming up; and that he ought not to have

made

made Sail ahead of the Three Ships ſtationed between him and the *Marlborough* (but lying to Windward), neither before her Maſts were gone, nor after he obſerved them to be gone, as he was then engaged with Three of the Four ſternmoſt *Spaniſh* Ships.

The Court do unanimouſly agree, That Captain *Williams*, having failed in his Duty, as afore-mentioned, falls under Part of the Twelfth Article of an Act of 13 *Charles* II. for eſtabliſhing Articles and Orders for the Regulating and better Government of his Majeſty's Navies, Ships of War, and Forces by Sea: But, in regard to the long Services of Captain *Williams* in the Navy, and the general good Character he has always born therein; That his Eye-ſight was very defective at the Time of the Engagement; That his Expreſſions and Behaviour manifeſted an Eagerneſs to have engaged the Enemy more vigorouſly, had he been properly ſeconded: That he has already ſuffered a conſiderable Puniſhment, by the Loſs of his Ship, and a Confinement of ſeveral Months; That he came into the Fleet but juſt before the Engagement began; and only received verbal Orders from the Admiral, to fall into his Station between the *Rupert* and *Dunkirk*: But more eſpecially, as his Poſition, while he was engaged with the Firſt Ship, does not ſeem to be a very clear Point (ſince, of the Nineteen Members who compoſe the Court, Nine are of Opinion he was in the Line); the Court are unanimouſly of Opinion, That all theſe Conſiderations do weigh greatly in Mitigation of the Puniſhment that might be otherwiſe due: And do therefore only adjudge him, the ſaid Captain *Edmund Williams*, to be unfit to be employed any more in his Majeſty's Service at Sea: And he is hereby adjudged to be unfit to be employed any more in his Majeſty's Service at Sea accordingly: But the Court do unanimouſly humbly recommend him to the Right Honourable the Lords Commiſſioners of the Admiralty, to be continued upon the Half-Pay, according to his Seniority.

J. Pittman.
E. Spragge.
Arch. Stuart.
John Orme.

C. Ogle.
P. Mayne.
Thomas Smith.
Wm. Perry.
Will. Chambers.
J. Rentone.
Rob. Allen.
Tho. Limeburner.
Tho. Frankland.
William Hewett.
Cha. Colby.
Joſ. Hamar.
C. Molloy.
Fran. Geary.
R. Erskine.

Cha. Fearne, Ju. Ad.

And then the Marſhal was ordered to releaſe the Priſoner out of his Cuſtody.

The Court adjourned till To-morrow Morning, Eight o'Clock.

COPY

COPY

OF THE

MINUTES

AND

PROCEEDINGS,

Taken AT and UPON the

TRYAL

OF

Captain *JOHN AMBROSE.*

THE TRIAL OF THE MAIDSTONE

OR

TRAVAIL

IN

PROCEEDINGS

AND

MINUTES

OF THE

JURY

The FIRST DAY

UPON

Captain *AMBROSE*'s TRYAL,

On Board His Majesty's Ship the *London*, at *Chatham*,

FRIDAY *the* 18*th of* October, 1745.

THE Court met, according to Adjournment, and consisted of the following Members; *viz.*

Sir *Chaloner Ogle*, President.

Rear-Admiral *Mayne*,
Capt. *Parry*,
Rentone,
Limeburner,
Sir *Wm. Hewett*,
Laton,
Sir *Charles Molloy*,
Erskine,
Catford,
Hon. *Arch. Stuart*,
Thomas Smith, Esq;
Capt. *Chambers*,
Allen,
Frankland,
Colby,
Hamar,
Callis,
Pittman,
Spragge,
Ormè.

A Letter was communicated to the Court by the President, from Captain *Geary*, representing his Inability to attend, on account of his ill State of Health.

Captain *Catford* being a new Member, the following Powers were read; *viz.*

The Commission appointing Sir *Chaloner Ogle* Commander in Chief of his Majesty's Ships in the Rivers of *Thames* and *Medway*, and at the *Buoy of the Nore*.

The general Commission to Sir *Chaloner Ogle* for holding Courts-Martial.

The Warrant to Sir *Chaloner Ogle* for holding this particular Court-Martial.

Then the Marshal brought in Captain *Ambrose*.

The Court were sworn.

One of the Members moved, That the Clause against wilful and corrupt Perjury at Courts-Martial, contained in an Act of the Eighteenth of his present Majesty, might be read, in open Court, to all the Witnesses; both in Support of the Charge, and on Behalf of the Prisoner: And the Court thinking the same very proper, such of the Witnesses as were on board were called in: And the Clause was read to them by the Judge-Advocate: And then they withdrew.

The Charge against Captain *Ambrose* was read.

Charge against John Ambrose, *Esquire.*

First, THAT, on the Eleventh Day of *February*, in the Year of our Lord 1743, *Thomas Mathews*, Esquire, was Admiral and Commander in Chief of his Majesty's Fleet in the *Mediterranean* Sea; and *John Ambrose*, Esquire, being then and there Captain and Commander of his Majesty's Ship *Rupert*, and under the Command and in the Division of the said Admiral; and the said *Thomas Mathews* being in Sight and View of the Combined Fleets of the King of *Spain*, his Majesty's then declared Enemy, and the *French* King his Ally and Confederate; and the said Combined Fleet being very near, and in Likelihood of an Engagement with his Majesty's said Fleet; the said *Thomas Mathews* did cause the proper Signal to be made to engage; and did then and there, with several of his Majesty's Ships under his Command, bear down upon, engage, and join Battle with his Majesty's said Enemies, and endeavour to take, fire, kill, and endamage the said Enemy: And that the said *John Ambrose*, then having the Command of his Majesty's said Ship *Rupert*, was in full Sight and View of the Signal to engage, as aforesaid, and in View of the said Engagement; and well knew the Duty required by the said Signal; and that, by the Articles of War, his Majesty's Instructions, and the Discipline of the Navy, it was his Duty to have done his utmost to take, fire, kill, and endamage his Majesty's said Enemies: Yet the said *John Ambrose* did not do his utmost to take, fire, kill, and endamage his Majesty's said Enemy, as he might and ought to have done; but, instead thereof, withdrew, or kept back, from the Fight; and kept and continued, with the said Ship under his Command, to Windward of the Enemy, during all or the greatest Part of the said Engagement, notwithstanding it was in his Power to have engaged with the said Ship under his Command, in his proper Station, in Fight with his Majesty's said Enemies, had he used the proper Endeavours for that Purpose, and though it was his Duty so to have done; and kept and continued out of his Station, and above the Distance of point-blank Shot from his Majesty's said Enemies, during all or the greatest Part of the said Engagement; in Breach of the Articles of War, his Majesty's Instructions, and the Commands of the Admiral, as aforesaid.

Second, That, by the Twentieth Article of his Majesty's Fighting Instructions to his Commanders, it is expressly charged and commanded

to the Effect following; *viz.* 'Every Com-'mander is to take care, that his Guns are not 'fired till he is ſure he can reach the Enemy upon 'a Point-blank:' Yet, notwithſtanding, he the ſaid *John Ambroſe* did, on the ſaid 11th Day of *February*, fire, or cauſe to be fired, at the Enemy, Two hundred, or at leaſt One hundred Shot, when he was not in Reach of the Enemy upon a Point-blank; and many of them when he was not even in Reach of the Enemy on random Shot; in Breach of his Duty, and Violation of the Obedience due to his Majeſty, and his Inſtructions.

Third, That, by the Twenty-fourth Article of his Majeſty's Fighting Inſtructions to his Commanders, in caſe any Ship ſhall leave her Station in the Line of Battle, the next Ships are directed to cloſe up the Line: Notwithſtanding which, and that his Majeſty's Ships, poſted in the Line of Battle between his Majeſty's Ships *Namur* and *Marlborough*, and his Majeſty's ſaid Ship *Rupert*, under the Command of the ſaid *John Ambroſe*, were the *Dorſetſhire* and *Eſſex*, which Ships did not keep in their Stations, but kept to Windward of the Line; and that, during the Engagement aforeſaid, his Majeſty's Ships *Namur* and *Marlborough* were hard preſſed; and the latter was diſabled in the ſaid Fight, having her Main and Mizen Maſts ſhot away; and, after ſhe was ſo diſabled as aforeſaid, continued for a conſiderable Time engaged in Fight with his Majeſty's ſaid Enemies, and in Danger of being taken or deſtroyed; all which the ſaid *John Ambroſe* ſaw; he the ſaid *John Ambroſe* then being in Command as aforeſaid, and being capable of yielding Aſſiſtance and Relief to his Majeſty's ſaid Ships *Namur* and *Marlborough*, by going with his Majeſty's Ship *Rupert*, then under his Command, to their Aſſiſtance, which he might and ought to have done, he the ſaid *John Ambroſe* did not do his utmoſt to aſſiſt and relieve his Majeſty's ſaid Ships; but withdrew, and kept back, with his Majeſty's ſaid Ship under his Command, from the ſaid Fight or Engagement, and from the Aſſiſtance of his Majeſty's ſaid Ships *Namur* and *Marlborough*; contrary to his Duty, the Articles of War, and his Majeſty's Inſtructions.

Fourth, That, during the ſaid Engagement, the proper Signal was made, and Orders given, by the ſaid *Thomas Mathews*, for the Captain of the *Anne Galley* Fireſhip to bear down upon the *Real*, one of the Ships of his Majeſty's ſaid Enemy, and to burn, ſink, or otherwiſe deſtroy his Majeſty's ſaid Enemies; and the ſaid Ship, and the Captain of the ſaid *Anne Galley* Fireſhip, did accordingly bear down towards his Majeſty's ſaid Enemies, and the ſaid Ship *Real*, in order to burn, ſink, or deſtroy her; but the ſaid Fireſhip, for want of the proper and neceſſary Succour and Support from his Majeſty's ſaid Ships, then in Sight and View of the ſaid Fireſhip, was herſelf burnt, ſunk, or otherwiſe deſtroyed, by his Majeſty's ſaid Enemies, without doing any Execution upon his Majeſty's ſaid Enemies: And the ſaid *John Ambroſe* then having the Command of his Majeſty's ſaid Ship *Rupert*, and being in Sight and View of the ſaid Fireſhip, when ſhe was going down upon his Majeſty's ſaid Enemy's Ship *Real*; and knew the Improbability of her doing any Execution, if ſhe was not covered or conducted by ſome of his Majeſty's Ships; notwithſtanding all which, he the ſaid *John Ambroſe* neglected to cover or conduct the ſaid Fire-Ship, although the ſaid Ship under his Command was not then engaged with any of his Majeſty's ſaid Enemies, and notwithſtanding the Wind was fair for that Purpoſe, and the Ship under his Command not diſabled, and which he could and ought to have done; and his Behaviour herein was contrary to his Duty, the Articles of War, his Majeſty's Inſtructions, and the Diſcipline of the Navy.

Fifth, That the ſaid *John Ambroſe* was and is guilty of Diſobedience to his Majeſty's Inſtructions, and the Signals and Commands of the Admiral, and Neglect of Naval Military Diſcipline, and of divers notorious Breaches of his Duty, as a Captain and Commander of one of his Majeſty's Ships of War, upon the ſaid 11th Day of *February*, during the ſaid Engagement in the *Mediterranean* Sea; and was one of the principal Cauſes of the Miſcarriage of his Majeſty's ſaid Fleet.

This Charge was, on the 21ſt of *Auguſt*, 1745. ſettled and approved of by Mr. *Legge*.

John Sharpe,
P. Creſpigny.

Priſoner. It is a very heavy Charge: But I hope it will appear to this Court, without any Art or Colouring, that I did my Duty as an Officer.

Then the Witneſſes, in Support of the Charge, were ordered to be called in.

Captain *Thomas Knowler*, late Lieutenant of the *Namur*, called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 15.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Lower-Deck, forward.

Q. You ſeem to doubt whether Captain *Ambroſe* was within Point-blank: Was he within Point-blank, or not?

A. I am doubtful, as to that; but I rather think he was, when I ſaw him.

Q. When did you ſee him?

A. After the *Marlborough*'s Maſts were gone.

Q. How long after?

A. About a Quarter of an Hour.

Q. Was he to Windward of the Line at that time?

A. Yes, I think he was.

Q. From

Q. From whence do you take the Line?

A. From the *Namur*.

Q. Was ſhe then to Windward of the *Marlborough?*

A. Yes:—I don't ſpeak That as of the Beginning, but after the *Marlborough*'s Maſts were gone.

Q. Was the *Namur* hauled off?

A. She was upon the *Real*'s Larboard-Bow; and the *Marlborough* was aſtern of the *Namur* at that time when I ſaw the *Rupert*.

Q. Was the *Rupert* then to Windward of the *Namur?*

A. Yes.

Q. Did you never ſee the *Rupert* till after the *Marlborough*'s Maſts were gone?

A. No.

Q. Was the *Rupert* firing when you ſaw her?

A. Yes; I think ſhe was then firing.

Q. How much might ſhe be to Windward of you, when you firſt ſaw her?

A. About Two Points; and the *Marlborough* was then right aſtern of the *Namur*.

Q. Was you to Windward of the *Marlborough* then?

A. The *Marlborough* was right aſtern of us.

Q. Was your Ship lying the ſame Way as the *Marlborough?*

A. Yes.

Q. How was the *Marlborough* then from the *Real?*

A. I think the *Marlborough* was then a little on the *Real*'s Larboard Quarter; and the *Namur* upon her Bow.

Q. Was you then engaging?

A. No: We were not then engaging at all.

Q. Was it before, or after you fired your Stern-Chace?

A. I think it was before.

Q. What Diſtance was the *Rupert* from you, when you ſaw her Two Points to Windward?

A. I can't ſay.

Q. Did you ſee the *Rupert* fire then?

A. Yes, I think I did.

Q. What Ship did ſhe then fire at?

A. I can't ſay.

Q. Did any Ship of the Enemy appear near enough to her then, for her to fire at?

A. Random Shot might reach; but I can't ſay whether ſhe was within Point-blank, or not.

Q. At what time of the Day was that?

A. I cannot ſay:—It was a little after the *Marlborough* loſt her Maſts.

Q. How long did you ſee the *Rupert* at that time?

A. About a Quarter of an Hour; and ſhe was firing, ſome part, if not all that time.

Q. Did you ever, during the Engagement, obſerve the *Rupert* to be in a Line with the Admiral?

A. She might have been in a Line, and I not ſee her; for I ſaw her but a little time: But, when I ſaw her, ſhe was not in a Line.

Q. When you looked at the *Rupert*, Was ſhe to Windward, or to Leeward, of the *Dorſetſhire?*

A. I think ſhe was then to Leeward of the *Dorſetſhire*; but I can't be certain.

Q. Was you never ſent with a Meſſage to Captain *Ambroſe*, and the Ships aſtern?

A. Yes.

Q. Was you on board the *Rupert* with that Meſſage?

A. No:—I lay upon my Oars, when I ſpoke to her.

Q. At what time of the Day was that?

A. About Nine o'Clock in the Morning.

Q. What was the Meſſage you delivered to Captain *Ambroſe?*

A. To make all the Sail he could, and cloſe the Line as ſoon as poſſible.

Q. Did you obſerve him then to take no notice of the Line, that you was ſent upon that Meſſage?

A. I think he was then in a pretty good Line, and in the Admiral's Wake; though I can't be poſitive: But I can't ſay, that he was not then in a Line.

Q. Do you know of any other Meſſage that was ſent to the *Rupert?*

A. No.

Q. Were you then in a Line of Battle ahead, or in a Line abreaſt?

A. In a Line ahead.

Q. Did you obſerve the *Royal Oak* then?

A. No.

Q. Did you ſee her at any time?

A. No.

Q. Repeat the Meſſage, as near as you can, which you carried from the Admiral.

A. The Admiral ſaid to me, Go to the Ships aſtern, in my Diviſion, and to the *Neptune*; and tell them to make all the Sail they can, and cloſe the Line as near as poſſible.

Q. Did you ever ſee the *Rupert* to Leeward of the *Royal Oak?*

A. I never obſerved the *Royal Oak* at all.

Q. At what time did you go with that Meſſage to the *Rupert?*

A. About Nine o'Clock.

Q. At what time did the Admiral make the Signal to engage?

A. I can't ſay:—I left the *Namur* about Nine o'Clock, to carry the Admiral's Meſſage to the Ships of his Diviſion aſtern, and to the *Neptune*; and, I believe, I had paſſed the *Rupert* in my Return from the *Neptune*, when the Signal was made to engage: And I got again on board the *Namur* about Twelve o'Clock.

Q. Was the *Rupert* then in the Line, when you paſſed her?

A. I believe ſhe was:—I don't remember, that ſhe was then to Windward of the Line.

Q. When you bore away for the Enemy, and brought up to engage, Did you then ſee any of the Four Ships aſtern of the *Marlborough?*

A. No:

A. No:—I was then before the Maſt.

Q. Did you ſee the Fireſhip go down?

A. Yes.

Q. Do you know whether the Admiral ſent any Meſſage to any Ship, to cover the Fire-Ship?

A. I don't know.

Q. When the *Marlborough*'s Maſts were gone, Did you obſerve any other Signal to be out than was before?

A. No.

Q. After the *Marlborough*'s Maſts were gone, Did you ſee the *Rupert*, at any time, go down to aſſiſt her?

A. I don't know, that ſhe did.

Q. Was the *Rupert* in the Line before that?

A. I can't ſay:—She might be in a Line, or might not, as far as I know.

Q. How long was it, after the Beginning of the Engagement, before you ſaw the *Marlborough*'s Maſts were gone?

A. I believe, more than Two Hours:—I did not ſee her when her Maſts went away, nor immediately after.

Q. What Diſtance was the *Namur* from the *Marlborough*, when you perceived her Maſts to be gone?

A. I can't ſay:—We were then ahead of the *Marlborough*, and upon the *Real*'s Weather-Bow.

Q. Was the *Rupert* then Two Points on your Weather-Quarter?

A. Yes.

Q. When you carried the Meſſage to Captain *Ambroſe*, What Anſwer did he make?

A. I don't remember his Anſwer: But he made a Compliment to the Admiral, to wiſh him Joy of that glorious Day.

Q. When you delivered the Meſſage to Captain *Ambroſe*, Did he make any Objection, That any Ships were in his Way, to prevent his cloſeing properly with the Admiral?

A. No. When I delivered the Meſſage, the *Rupert* was to Leeward of the *Dorſetſhire* and *Eſſex*.

Asked by the Priſoner,

Q. When you came with that Meſſage to me, Was the Signal for the Line of Battle ahead then out?

A. I can't be poſitive:—I think it was:—I can't tell.

Q. Did the Admiral apprehend, when you came with that Meſſage, that I was in the wrong? Or was the Meſſage chiefly intended to the *Neptune*; and only to call upon me in paſſing by?

A. I can't ſay:—The Admiral did not particularly mention the *Rupert*; but only, in general, the Ships of his Diviſion.

Court. We apprehend the Admiral meant, That you, and all the Ships aſtern, ſhould cloſe the Line.

Q. Was I then in a Line with the Admiral?

A. I think you was in a pretty good Line, both when I went, and as I came back.

Q. As you did not ſee me till between Three and Four in the Afternoon; and then you ſay, I was upon the Admiral's Weather-Quarter; I would ask you, Was you not quartered at the Guns in the Gun-room; and did you not point thoſe Guns yourſelf, and fire them, till you got out of Gun-ſhot; and received Orders not to fire any more, becauſe you was out of Gun-ſhot?

A. I did fire Guns in the Gun-room; but, when I received Orders to leave off Firing, I don't know whether we were within Gun-ſhot, or not:—When I received Orders to ceaſe Fireing, I can't ſay, whether we were ahead of the *Real*, or upon her Bow; but I remember I was obliged to take up my Sword, and threaten the Men, to make them leave off Firing. It was after the *Marlborough*'s Maſts were gone that I ſaw you to Windward of the Line.

Q. How could I be to Windward of the Line, if you was hauling your Wind?

A. I ſaw you from our Stern-Ports.

The Court asked,

Q. Was it before the Admiral luff'd up to fire thoſe Guns from the Gun-room, that you ſaw the *Rupert*; or was it after?

A. I think it was before; but I am not poſitive.—We had done engaging with our Broadſides with the *Real*.

Q. When you fired your Stern-Chace at the *Real*, In what Poſition was the *Namur* then?

A. I think ſhe was narrow upon the *Real*'s Weather-Bow; and ſometimes almoſt right ahead of her.

Q. How did you then obſerve the *Rupert*?

A. I think it was before that time that I obſerved the *Rupert*.

Q. Did you ever ſee the *Rupert* engage the Enemy ſo near as to do Execution?

A. I don't know; for I know not what Ship ſhe fired at.

Q. Had ſhe any Ship to fire at?

A. I don't know:—I did not ſee any Ship ſhe fired at.

Q. During the Time you obſerved the *Rupert*, Did you ſee her make any Motion to go down towards the *Marlborough*, by making Sail, or altering her Courſe?

A. No; I don't remember, that ſhe did.

Q. When you lay on the *Real*'s Weather-Bow, Do you remember what Ships of the Enemy were ahead of her?

A. I believe, her Second ahead was then gone from her.

Q. Was you to Leeward of the *Marlborough* then?

A. Yes.

Q. How did the *Marlborough* then bear from you?

A. I think ſhe was a little upon our Weather Quarter.

Priſoner aſked,

Q. How do you know it was the *Rupert* that was not in the Line?

A. Yes, I am poſitive it was the *Rupert.*

Q. Might it not be the *Dunkirk*, or any other Ship, that was not in the Line?

Court. He ſays he is poſitive.

Priſoner aſked,

Q. Might not the *Rupert* be in the Line at any other time beſides that Quarter of an Hour that you ſaw her?

A. She might, as far as I know.

Q. Do you know what Ship ſhe engaged?

A. I don't know.

Q. How many Ships were aſtern of the *Real*'s Second, at the time you delivered the Meſſage?

A. I did not ſee them then: — I believe, Five.

Q. Did you ſee them, when they went to Leeward?

A. Yes.

Q. How many were there of them?

A. Five.

Q. How far were thoſe ſternmoſt Ships from the *Real*'s Second, when you began to engage?

A. I don't know.

Q. Did thoſe Ships aſtern come up and fire at you?—Did any other Ship fire at you, but the *Real?* Or did the Ships coming up ever fire at you?

A. I ſaw ſome of them to Leeward of the *Namur* a great Way, making Sail up, at the time the *Marlborough* was upon our Weather-Quarter, and the Fireſhip was going down.

Q. Did they ever fire at your Ship, or the *Marlborough?*

A. I don't know.

Q. Did any Ship beſide the *Real* fire at the Fireſhip?

A. Yes; ſome of thoſe ſternmoſt Ships did.

Q. Did their Shot reach her?

A. I believe they did.

Q. Do you think, if the Admiral had not wore, and gone towards thoſe ſternmoſt Ships, but lain where he was, that he would ever have been engaged with thoſe Ships; or were they not forced to Leeward of their Line, before they got up to reach the *Namur?*

A. They were to Leeward of their Line; but I can't tell what occaſioned them to be ſo.

Court. Your own Evidence will better anſwer theſe Queſtions.

Priſoner. I apprehend it will be better, if the King's Evidence corroborate my Evidence; and if it appears, that I engaged theſe Five Ships, and kept them from ours, that it will be thought I did my Duty.

Priſoner aſked,

Q. If ſome Ships had not ſtopp'd thoſe ſternmoſt Ships, Would they not have been up, and torn the *Namur* and *Marlborough* all to pieces?

A. They were to Leeward; but I don't know what cauſed them to go to Leeward.

Court aſked,

Q. When you obſerved thoſe Five Ships go to Leeward, was the *Real* then bore away?

A. The *Real* was then upon the *Namur*'s Starboard-Bow; and, I think, ſhe was then edging away.

Q. Was it before or after the Fireſhip blew up?

A. Before the Fireſhip was within Muſquet-Shot?

Q. Did the Five *Spaniſh* Ships ſeem to haul up more to Windward, than for their own Admiral?

A. They kept their Wind as much as poſſible, that they might reach the Fireſhip, which was then going down to the *Real.*

Q. At what Diſtance was the *Real*, and how did ſhe bear from the *Marlborough*, at the time the Fireſhip was going to the *Real?*

A. She was within random Gun-ſhot, and about Two or Three Points upon our Starboard-Bow.

Priſoner aſked,

Q. Had you commanded the *Rupert*, could you have done more than I did?

A. I can't ſay; becauſe I don't know what you did.

Then he withdrew.

Edward Miller, Gunner of the *Namur*, called in, and ſworn.

Q. Was you preſent, when the Clauſe in the Act of Parliament was read concerning Perjury?

A. Yes.

Q. Where was you quartered?

A. Upon the Lower-Gun-deck the whole time: I was ſent for once upon Deck, for about Two Minutes; but I made no Obſervations.

Then his Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 36.): And he declared the ſame to be true.

Q. Did you ſee the *Rupert* during the whole Time of Action?

A. No: I only ſaw her a few Minutes.

Q. At what time did you ſee her?

A. After we were forced ahead by the *Marlborough*, about Half paſt Two o'Clock, I looked out of one of the Gun-room-Ports; and ſaw the *Rupert* to Windward of the *Namur*, about Two Points upon our Weather Quarter.

Q. Was ſhe then engaged?

A. No; I did not ſee her then engaged.

Q. At what Time of the Day did you ſee her engaged?

A. I ſaw her again about Four o'Clock, out of one of the Stern-Ports; and ſhe was then engaged pretty ſmartly with the Four ſternmoſt *Spaniſh* Ships.

Q. At what Diſtance was the *Rupert* then from the Enemy? Was ſhe within Point-blank?

A. I can't ſay: We were then Two Miles diſtant from the *Rupert*; and I can't tell whether ſhe was within Point-blank, or not.

Q. Were any of the other Ships then engaged?

A. Yes; the *Royal Oak*.

Q. When you ſaw the *Rupert* a Second time engaged ſmartly, what other of our Ships, ahead or aſtern of her, did you then ſee engaged?

A. I believe the *Dorſetſhire* might be Firing; and, I think, I then ſaw the *Royal Oak* alſo engaged; for the Two ſternmoſt of the Four appeared to be engaged.

Q. Which of thoſe Two Ships appeared to be the leewardmoſt?

A. I can't ſay; I can't charge my Memory.

Q. Was the *Rupert* Firing, when you ſaw her the Firſt time?

A. No.

Q. When you ſaw her the Second time engaged, Do you think ſhe was then in a Line?

A. Yes; I believe ſhe was in a Line with the Admiral.

Q. Was the Admiral then hauled off?

A. No: He was then about a Point upon the *Real*'s Weather-Bow.

Q. Was the *Rupert* in the Line then?

A. Yes.

Q. How was the *Marlborough* from the *Namur* then?

A. I don't know whether the *Marlborough* had not tow'd off then; but the *Marlborough* was moſt of the Time to Windward of the *Namur*, and the *Namur* ahead withal.

Q. Did not the *Marlborough* run in between you and the *Real*?

A. No: But the *Marlborough* ran her Bowſprit over the *Namur*'s Larboard-Quarter, which forced her ahead; but ſhe was not then to Windward of the *Marlborough*.

Q. Was the *Marlborough* ever to Leeward of you?

A. No: We were never to Windward of the *Marlborough*, while I ſaw her.

Q. Whereabouts was the *Marlborough*, with reſpect to your Ship, when you obſerved the *Rupert* engaged with the Four Ships?

A. The *Rupert* was then right aſtern: The Time I ſaw her to Windward was Half paſt Two o'Clock.

Q. How did the *Marlborough* bear, when you ſaw the *Rupert* engaged with thoſe Four Ships?

A. She was to Windward of the *Namur*; upon our Weather-Quarter.

Q. How long did you ſee the *Rupert*, the laſt time you looked at her?

A. About Three or Four Minutes.

Q. In what Poſition did the *Namur* lie, with regard to the *Real*, after the *Marlborough* forced her ahead, and when you ſaw the *Rupert* Two Points on your Weather-Quarter?

A. The *Namur* lay with her Stern to the *Real*.

Q. And how was the *Real* then from you?

A. Her Stern was directly towards us: Captain *Knowler* fired the Larboard Stern-Chace, and I fired the Starboard Stern-Chace.

Q. Did you ſee the Fireſhip?

A. Yes; I ſaw her coming down.

Q. Did the *Rupert* give her any Aſſiſtance, by covering her from the Enemy?

A. I don't know; I did not ſee that ſhe did.

Q. Did you ſee the *Rupert*, after the *Marlborough*'s Maſts were gone?

A. Not till Four o'Clock.

Q. Did you ever ſee the *Rupert* bear down to the *Marlborough*'s Aſſiſtance, after her Maſts were gone?

A. I did not ſee her; I can't ſay whether ſhe did, or not.

The Court obſerved an Unwillingneſs in the Witneſs; and told him, They had obſerved the like of him upon a former Tryal; and that now, upon his Examination, he differed from what he had ſworn to in his Depoſition: And they called for his Depoſition to be read: Which was read accordingly: Wherein he declared, That the *Rupert* did not bear down into a Line with the Admiral, as he knew; but kept to Windward of the Line, till the *Namur* wore, which was towards the Evening; and that Captain *Ambroſe* was in Sight of the Diſtreſs of the *Marlborough*, and was capable of yielding her Aſſiſtance, if he had bore down; but that he did not.

Q. Did you never ſee the *Marlborough* to Leeward of the *Namur*?

A. No.

Q. Not from the Beginning of the Engagement?

A. No.

Q. Did you never, at any time during the Engagement, ſee the *Marlborough* to Leeward of the *Namur*?

A. No: I never ſaw her to Leeward; but the *Namur* was always to Leeward of her.

Aſked by the Priſoner,

Q. If I had been in a Line with the Admiral, when you ſay I was out of the Line, Was there any Ship for me to have engaged?

A. No.

The Court again taking notice of the Contradiction in his Teſtimony upon his Examination, from what he had given in his Depoſition, he was ordered to withdraw: And it was moved, That if the Court were ſatisfied, the Witneſs had perjured himſelf, he might be committed. The Witneſs ſaid, That a Man might read his Depoſition, but not digeſt every Part of it.

Then he withdrew.

Anthony Pinno, Maſter's Mate of the *Namur*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 54.): And he declared the ſame to be true.

Q. Where

Q. Where was you quartered?

A. Upon the middle Gun-deck.

Q. Did you ſee the *Rupert* at the Beginning of the Engagement?

A. No.

Q. What Time did you ſee her?

A. About Half paſt Two o'Clock.

Q. What was ſhe then doing? Was ſhe Firing?

A. No, not then.

Q. Where was ſhe?

A. To Windward of the *Royal Oak*, and on her Larboard-Bow.

Q. How far on her Larboard-Bow?

A. I cannot judge.

Q. Cannot you form a Judgment of the Diſtance, either by Cables Length, or Miles?

A. I believe ſhe might be a Quarter of a Mile.

Q. What Diſtance was ſhe from the *Namur?*

A. About Two Miles.

Q. How far to Windward of the *Namur?*

A. I believe, about a Mile and an Half aſtern, and to Windward withal.

Q. How did ſhe bear from the *Namur?*

A. A little on her Weather-Quarter.

Q. When did you obſerve the *Rupert* fire?

A. Between Three and Four o'Clock, or about Four o'Clock.

Q. Was ſhe in a Line with the *Namur*, when you ſaw her fire about Four o'Clock?

A. She was a little to Windward of the Line.

Q. What do you take the Line from?

A. I never ſaw the Line of Battle.

Q. Was ſhe aſtern or to Windward of the *Namur?*

A. A little upon the *Namur*'s Larboard-Quarter.

Q. How many Points?

A. I cannot ſay.

Q. Was ſhe then Firing at the Enemy?

A. Yes.

Q. Did you ſee any other Ship, that was ahead or aſtern of the *Rupert*, fire at that Time?

A. No, I did not.

Q. Did you ſee the *Royal Oak* then?

A. No.

Q. From whence did you ſee the *Rupert?*

A. Out of the Larboard-Stern Window.

Q. At what Diſtance did ſhe then engage the Enemy?

A. I can't judge.

Q. Was ſhe within Point-blank, or random Shot?

A. I can't ſay.

Q. Did you ſee any of her Shot fall ſhort, or go over?

A. No, I did not ſee any Shot at all.

Q. Did you ſee the Fireſhip when ſhe was going down?

A. Yes.

Q. Did you ſee the *Rupert* bear down to aſſiſt the Fireſhip?

A. No.

Q. Did you ſee the *Marlborough*, after her Maſts were gone?

A. Yes.

Q. Did you ſee any Ship go down to aſſiſt her?

A. No.

Q. Was the *Rupert* in a Line, when ſhe engaged the Four *Spaniſh* Ships?

A. No; ſhe was a little out of the Line, upon our Weather-Quarter.

Q. How long did you obſerve the *Rupert*, when you ſaw her about Half paſt Two o'Clock?

A. For about Two Minutes.

Q. What was ſhe doing then?

A. Nothing.

Q. About Four o'Clock you ſaw her again?

A. Yes.

Q. How long did you then ſee her?

A. About Five or Six Minutes.

Q. Was ſhe then engaged ſmartly?

A. Yes.

Q. Was the *Rupert*, at the Second time you ſaw her, farther to Leeward, and nearer in a Line with the *Namur*, than ſhe was the Firſt time?

A. Yes, ſhe was.

Q. How long did you ſee the *Rupert* engage the laſt time?

A. About Five or Six Minutes, that I ſaw her.

Q. Did you not ſee her afterwards?

A. No.

Q. Did you obſerve her Guns to reach the Enemy, when ſhe engaged?

A. I did not ſee whether they did or not.

Q. Was ſhe within Point-blank?

A. I can't ſay.

The Court obſerved, that That did not agree with what he had ſaid in his Depoſition: Which was called for; and Part of it read: Wherein he declared, That the *Rupert* bore down towards the Enemy during the Engagement; but, as he apprehended, not within point-blank Shot, during any Part of the Engagement.

Aſked by the Priſoner,

Q. If I had been in a Line with my Admiral at firſt, Was there any Ship for me to engage?

A. I can't tell whether there was or no.

Q. Were there Five, or Four, *Spaniſh* Ships coming up?

A. I ſaw but Four.

Q. What Diſtance were they from you, when you ſaw the *Rupert* engaged?

A. I believe about Three Miles.

Q. Do you believe the *Rupert*'s engaging thoſe Ships, prevented their coming up to the Relief of their Admiral, and to attack the *Marlborough?*

A. I can't ſay.

Q. Did not the *Rupert* and *Royal Oak* beat them out of the Line?

A. I can't tell.

Q. Did

Q. Did you ſee them edge away, or alter their Courſe?

A. I can't ſay; becauſe I was not abaft.

Q. Might not you be miſtaken? Are you ſure it was the *Rupert* which you ſaw to Windward?

A. Yes; I am ſure of it.

Q. Suppoſe I had come up abreaſt of the Admiral in the Line you ſaw me in, ſhould I have been a Ship's Breadth from him? or, how far diſtant ſhould I have been to Windward of him?

A. I can't ſay; I am not a Judge.

Then the Priſoner ſaid,

"I hope the Court will conſider, that I "might be upon the Admiral's Quarter, at the "Diſtance I was from him; and, if I came "up in a Line, I might have been very little "from him."

Then the Witneſs withdrew.

Lieutenant *Benjamin Jenkins*, late a Midſhipman in the *Namur*, was called in and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 38.): And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Braces.

Q. Declare what you know of the *Rupert* during the Action.

A. When we bore away to engage, I believe the Ships aſtern bore away too; and after we had been ſhot ahead by the *Marlborough*, I looked out, and obſerved the Ships aſtern the *Marlborough* to be Windward of the *Namur*, upon our Weather-Quarter.

Q. How long after you began to engage, was it, that the *Namur* ſhot ahead?

A. About an Hour, or better.

Q. How far to Windward were the Ships aſtern?

A. I can't ſay how far:—I don't remember how many Points.

Q. Did you obſerve the *Rupert*?

A. I did not obſerve her particularly.

Q. Did you ſee any of them fire?

A. I remember only to have ſeen the *Dorſetſhire* fire.

Q. Which was the leewardmoſt of the Four?

A. I think the *Dorſetſhire* was the leewardmoſt.

Q. At what time was that?

A. Juſt after we had ſhot ahead.

Q. When you obſerved thoſe Ships a little on your Weather-Quarter, Did your Ship lie as the *Marlborough* did, or was you luffed a little to Windward?

A. I can't ſay.

Q. Did you never ſee any of thoſe Four Ships fire, but the *Dorſetſhire*?

A. I did not:—I ſaw no Ship fire, but the *Marlborough* and *Dorſetſhire*.

Q. Did you ſee them, after the *Marlborough* loſt her Maſts?

A. No.

Q. Could they have bore down to aſſiſt the *Marlborough*?

A. Yes; they being to Windward.

Q. How do you know they were to Windward?

A. Becauſe, when I looked out aſtern, I could ſee no Ship aſtern, but the *Marlborough*.

Q. How do you know, that they kept to Windward, till the Admiral wore?

A. Becauſe I looked ſeveral times out of the Stern Windows, and could ſee no Ship, but the *Marlborough*.

Q. Did you, from the Beginning of the Action to the Time you wore, ever obſerve the *Rupert* in a Line with the *Namur*?

A. No; I never did.

Q. Are you ſure thoſe Four Ships, or any of them, were not to Leeward?

A. If they had been to Leeward, I muſt have ſeen them; for I ſaw the Four *Spaniſh* Ships to Leeward.

Q. Do you believe they were in the Line?

A. No.

Q. Did you take notice of thoſe Four or Five *Spaniſh* Ships coming up aſtern?

A. I did not take a great deal of notice of them: I ſaw them coming up towards the Fleet.

Q. When you ſaw the *Dorſetſhire* to Windward, Did you obſerve any of the other Ships to Windward alſo?

A. I juſt ſaw them to Windward; but did not obſerve what they were doing.

Q. Did you ſee the *Marlborough*, when her Maſts went away?

A. No:—I ſaw her ſoon after:—I heard her Maſts fall.

Q. What Ship was next to her, to have aſſiſted her?

A. The *Dorſetſhire*.

Q. Did you then obſerve the *Dorſetſhire*, or any other Ships, go down to aſſiſt her?

A. When our Boat went to the *Dorſetſhire*, I then ſaw her bear down a little, and haul her Wind again; but, whether ſhe bore down afterwards, I can't tell, for I did not ſee her after.

Q. Did you ſee any of the other Ships bear down?

A. No.

Q. Do you think it was poſſible, that the Four or Five *Spaniſh* Ships, coming up, could be beat out of the Line by our Ships aſtern?

A. I think they might have done it, if they had bore down to do it.

Q. Do you think, in the Poſition our Ships aſtern, and the Enemy's Ships aſtern, were in, that it was poſſible for our Ships to drive them out of the Line?

A. I can't ſay.

Q. If our Four Ships aſtern had bore down with the Admiral, and as far to Leeward as he did, Would they have been in a proper Poſition to have received the *Spaniſh* Ships, as they came up?

A. Yes; to be ſure, they would.

Q. Are

Q. Are you ſure, that the *Rupert* was one of thoſe Four Ships to Windward of the *Marlborough?*

A. Yes: I am ſure, ſhe was.

Aſked by the Priſoner,

Q. You ſay, You ſaw the Five *Spaniſh* Ships coming up: Did you ſee them fire at any of our Ships; or any of ours at them? Did you ſee no Ship of ours-fire at them?

A. No: I ſaw none of our Ships fire, but the *Dorſetſhire* and *Marlborough:* When the Fireſhip blew up, the *Spaniſh* Ships fired, and their Shot reached.

Q. Were not the Ships they were firing at, to Leeward of Admiral *Mathews?*

A. I did not ſee any other Ships to Leeward of the Admiral, but the *Marlborough*; which was, after her Maſts were gone.

Q. At the time you ſaw the *Dorſetſhire* on your Weather-Quarter, whereabouts did you ſee the other Ships aſtern of the *Dorſetſhire?*

A. I really can't ſay: They were all to Windward of the *Namur:* If they had been in a Line, I muſt have ſeen them out of the Stern Window.

Court aſked,

Q. When you looked out of the Stern Window, was the *Namur* then luffed up?

A. I don't imagine the *Namur* did luff up: I think ſhe only ſhot ahead.

Q. Might they not have been in a Line, and you not ſee them?

A. No.

Q. Did you ever luff up in the *Namur?*

A. I believe not: We were trimmed ſharp, when we began to engage; but, whether we laſked away, or not, while we engaged, I can't ſay.

Q. Did you ever ſee any Ships aſtern of you fire?

A. I ſaw only the *Dorſetſhire* and *Marlborough* fire.

Priſoner aſked,

Q. Could you not have miſtaken the *Dunkirk* for the *Rupert?*

A. No: I am poſitive it was the *Rupert:* I knew her very well at ſome Diſtance.

Q. How far were the Five Sail of the Enemy off?

A. I can't ſay.

Q. How many of the Enemy's Ships were there coming up aſtern? Were there Four or Five?

A. Either Four or Five; but I can't ſay which.

Q. Did thoſe Five Ships ever come up to fire at the *Namur* and *Marlborough?*

A. None of them fired at the *Namur*, till ſhe wore; but, I believe, ſome of them fired at the Fireſhip.

Q. Suppoſe I had been in a Line, Was there a Ship for me to engage?

A. No: Not at firſt; but, after the Four *Spaniſh* Ships came up, there would.

Q. Did you ever ſee me fire at them?

A. I never ſaw you fire at all; but you might fire, and I not ſee you.

Court aſked,

Q. Could the *Rupert* have engaged ſmartly, without your ſeeing her?

A. No: I think not.

Then he withdrew.

Captain *Timothy Nucella*, late Lieutenant of the *Marlborough*, was called in, and ſworn.

His Affidavit was read (as in Captain *Burriſh*'s Tryal, Page 27.): And he declared the ſame to be true.

Q. Where was you quartered?

A. On the Lower-Gun-deck.

Q. You ſay, the *Rupert* was to Windward till about Five o' Clock.

A. Yes: Till the *Real* bore away.

Q. Did you ſee the *Rupert* fire?

A. Yes: When I got up upon the Poop.

Q. At what time was that?

A. About Three o' Clock; after our Maſts were gone.

Q. Did you never ſee her, before that?

A. Yes: Once, upon our Peoples complaining of not being aſſiſted by the *Dorſetſhire*, I looked out of the Stern-Port, and obſerved the Poſition of the Four Ships to Windward; the *Dorſetſhire* lay to Windward of us; the *Eſſex*, to Windward of her; the *Rupert*, in a Line with the *Dorſetſhire*; and the *Royal Oak*, to Leeward of the *Rupert*.

Q. At what time of the Day was this?

A. Between Two and Three o'Clock: About Half an Hour after Two.

Q. Did you ſee the *Rupert* then fire?

A. There was Firing from thoſe Ships; but whether from the *Rupert*, I can't ſay.

Q. Was the *Rupert* then to Windward of the *Marlborough?*

A. Yes.

Q. How did the *Rupert* then bear, with regard to the *Namur?*

A. She was to Windward of the *Namur*; the *Namur* being then in a Line with the *Marlborough*.

Q. At what time of the Day did you obſerve the *Spaniſh* ſternmoſt Ships to be neareſt to you?

A. About Half an Hour after Four o'Clock.

Q. Where was the *Rupert* then?

A. I did not obſerve particularly where ſhe was then.

Q. Did you not obſerve, whether any of our Ships were then engaged with thoſe *Spaniſh* Ships?

A. I did not ſee any of our Ships then fire; but, when I ſaw them from the Poop, at about Half paſt Three, I then ſaw the *Rupert* and *Royal Oak* firing; and it muſt have been at thoſe Ships.

Q. Did you obſerve any Ships engaging them, when they were neareſt to you?

A. No:—I did not obſerve.

Q. When our Ships aſtern fired, were they within Point-blank?

A. I believe not.

Q. Did they engage at a proper Diſtance for a Man of War to engage?

A. I think they did not.

Q. Did you obſerve, any Part of the Day, the *Rupert* to be in a Line with you, or the Admiral?

A. With us never; but, when the Admiral hauled to Windward, I can't ſay but I believe ſhe might then be in a Line with him.

Q. What was the fartheſt Diſtance the *Namur* might be from you, when ſhe was hauled up?

A. When I came upon Deck, ſhe was then about a Quarter of a Mile upon our Weather-Bow.

Q. What time was that?

A. About Half paſt Three o'Clock.

Q. How many Points was ſhe upon your Bow?

A. I can't ſay; it was not a great deal.

Q. What was the *Namur* then doing? Was ſhe then ſtanding on and nearer to the Wind than you?

A. She was then full, ſtanding on nearer to the Wind than the *Marlborough* was.

Q. Do you think the *Rupert*'s Firing at the Four *Spaniſh* Ships made them bear out of their Line, and hinder them from coming up to their Admiral, and from firing at you, and the Fire-ſhip?

A. I don't believe it did:—I thought they were coming up in a Line to cover their Admiral; and I did not perceive them to alter their Courſe.

Q. Did you ſee the *Rupert*, or any other Ship, bear down to cover the Fireſhip?

A. I did not obſerve, that any Ship did.

Q. Did you ſee the Fireſhip, when ſhe blew up?

A. Yes.

Q. Was any Ship near enough to cover her?

A. No:—No Ship covered her.

Q. How long was it after that, that the Admiral wore?

A. He was before the Wind, when the Fire-ſhip ſunk.

Q. You ſay in your Depoſition, that the *Royal Oak* was the leewardmoſt of the Four Ships aſtern of the *Marlborough:* Are you ſure it was the *Royal Oak*, and not the *Rupert?*

A. I am ſure:—It was the ſternmoſt of the Four, and I took her to be the *Royal Oak*.

Q. At the Time you ſaw the Four ſternmoſt *Spaniſh* Ships coming up, if our Four Ships had been in a proper Line with the *Marlborough*, and engaged as Men of War ought, Would they not have prevented thoſe Ships from comeing up to their Admiral, or annoying the Fire-ſhip?

A. Yes:—If they had been in that Poſition, as there would have been Ship for Ship, they muſt have ſtopped them.

Q. Did thoſe Ships hurt the Fireſhip?

A. They fired at her.

Q. Did you obſerve our Ships aſtern make no Motion to cloſe with the Enemy, as they were drawing up with their Admiral?

A. I did not ſee any of our Ships cloſe with them; but I can't ſay poſitively, whether they did not bear down, in order to do ſo, and haul up again; becauſe they might do ſo, and I not ſee it.

Q. How long might you ſee the *Rupert* fire at the Enemy?

A. About Two or Three Minutes:—I ſaw her Twice:—Once, a tranſient View from the Gangway; and once, from the Poop; and then ſhe was firing at the Enemy.

Q. Was ſhe then within Point-blank?

A. I can't ſay ſhe was.

Q. When you ſaw her fire, Was ſhe at the Diſtance a Man of War ought to engage?

A. I think ſhe was not ſo near as a Ship ought properly to be, before the Admiral wore.

Q. When you ſaw her from the Poop, Was ſhe engaged?

A. Yes; ſhe fired.

Q. You ſay, The *Spaniſh* Ships did not bear away from the Fire of any of our Ships.

A. Yes.

Q. Could the *Rupert* have at any time engaged the Enemy, as you call, properly, without being conſiderably to Leeward of the Admiral?

A. It was difficult for me to make that Obſervation; but, I believe, ſhe could, without being conſiderably to Leeward of the Admiral.—If ſhe had been in a Line with the *Marlborough*, ſhe might have engaged properly.

Q. You have ſaid, That the *Rupert* was not engaged at a proper Diſtance: As an Officer, give your Opinion, What Diſtance ought Ships to be from an Enemy, in general Engagements?

A. To be ſure they ought to be within Three or Four Cables Lengths, at the fartheſt.

Q. Do you think the *Rupert* was ever within that Diſtance of the Enemy, during the Time you ſaw her engaged?

A. When I ſaid, Three or Four Cables Lengths, I had not conſidered, how great a Diſtance that was; and, I think, it is much too far; for, I think, in general Engagements Ships ought not to be above Two Cables Lengths from the Enemy; and a ſingle Ship ought to be nearer.

Q. Do you think the *Rupert* was ever within Three or Four Cables Lengths, when you ſaw her engaged?

A. I can't judge of the certain Diſtance; but ſhe ſeemed to me to be at too great a Diſtance; I thought her too far off.

Q. Do you think this was a general Engagement?

No Anſwer.

Q. Did

Q. Did the headmoſt of thoſe Four *Spaniſh* Ships fire at the *Namur*, before ſhe wore?

A. I can't ſay:—They fired, but I can't tell at what particular Ship:—I believe, they might have fired at us; but their Shot did not reach us.

Q. At what Diſtance did you engage the *Real?*

A. I believe, not more than Two Cables Length at moſt, and ſometimes nearer.

Q. Had the Ships aſtern been in a Line with you, would they not have been near enough to engage the Enemy properly?

A. Yes, I believe they would.

One of the Members ſaid, He had a Queſtion to propoſe; which he would aſk, if the Court thought it a proper Queſtion; and that Captain *Nucella* might anſwer it, if He thought proper.

Q. I don't doubt, but a Gentleman of your Character had, at all times, free Acceſs to your Admiral: And as you, in your Depoſition, have charged this Gentleman, and Two others, with Miſconduct; Did you ever acquaint Admiral *Mathews*, in publick or in private, with the Miſbehaviour of any of theſe Gentlemen?

The Witneſs ſaid, He deſired to be excuſed anſwering it; and that he had not accuſed any body of Miſconduct.

The Court did not inſiſt upon an Anſwer.

Asked by the Priſoner,

Q. How far was the *Rupert* from you, when the *Marlborough*'s Maſts fell?

A. To the beſt of my Remembrance and Judgment, about a Mile.

Q. Do you think it is not poſſible for you to have been deceived, in the Diſtance Two Ships were engaging each other, at a Mile from you; Whether, though they were within Piſtol-ſhot of each other, they would not appear to you to be at a conſiderable Diſtance from one another?

A. I do not ſay at what Diſtance you engaged; I only ſay, you appeared to me, not to be near enough.

Q. Did you expect any Aſſiſtance from the *Rupert*, when your Maſts fell?

A. I did not at firſt immediately expect it from you; I expected it from the *Dorſetſhire* and *Eſſex*; but you might have aſſiſted us, to be ſure.

Q. If you had been Commander of the *Rupert*, when there were Two Ships of Ninety Guns, Four of Eighty, and One of Seventy, all attacking one Ship of the Enemy; all higgledy-piggledy, harum-ſcarum; and Five of the Enemy's Ships were coming up; would you, in a poor little Sixty-gun Ship, have gone up amongſt thoſe Ships of ours, to make more Confuſion, or have waited for the Enemy's Ships that were coming up?—Ought a Sixty-gun Ship, in my Situation, to have gone up to your Aſſiſtance, or to have waited for the *Spaniſh* Ships coming up?

A. I am not ſo good a Judge of your Situation, as you was yourſelf; and therefore can't ſay.

Court. We muſt not be directed by Captain *Nucella*'s Opinion.

Priſoner. The Court have aſked his Opinion, in regard to my Behaviour, as a *Britiſh* Man of War; and, I hope, I may have Leave to ask his Opinion too.

Q. Did any of thoſe Five Ships coming up, at any time paſs the *Rupert?*

A. I think ſome of them did, or elſe the headmoſt could not have come up ſo near to us.

Q. Was not the *Marlborough* towed out to Windward of the Line, at the time the Fireſhip blew up?

A. You went away from us, the Line left us, not we the Line.

Q. Were none of the Four Ships ſtationed aſtern of you, between you and the Enemy, when the Fireſhip blew up?

A. No, none of our Ships were then to Leeward, between us and the *Real.*

Q. You ſay, You ſaw the *Rupert* and *Royal Oak* fire.

A. Yes.

Q. Did you ſee any of the Enemy's Shot fall ſhort of the *Rupert?*

A. No.

Q. Did you ſee any of them go over?

A. No, I did not ſee any of the Shot either fall ſhort, or go over.—I did not ſee any of the Shot.

Q. Did the Enemy's Ships bear away Large, before they came up to their Admiral?

A. They bore away, after their Admiral bore away.

Q. Did not their Admiral bear away, upon ſeeing our Ships lie to receive thoſe Four or Five as they came up, in order that they might get clear of our Ships, by bearing away after him?

A. No: The Reaſon of their Admiral's Bearing away, I apprehend, to have been, to avoid the Fireſhip:—It was the Fireſhip ſaved our Bacon.

Q. Did the Five *Spaniſh* Ships continue in a good Line, till they fired at the *Marlborough?*

A. Yes.—I think the headmoſt of them fired at us, and then bore away; but their Shot did not reach us.—But I am not poſitive that they fired at us.

Priſoner. If they came up in a Line, and were not within Gun-ſhot of the *Marlborough*, then they could not have been within Gun-ſhot of the *Rupert.*

Court asked,

Q. Could the Five *Spaniſh* Ships have weathered you?

A. Yes, if they had hauled their Wind.

Q. In the Line they came up, could they have fetched your Ship, if they had not bore away?

A. Yes, I believe they could have fetched us.—They ſtemmed directly for our Lee-Quarter,

till

till they bore away; and we apprehended they fired at us, when they bore away; but I am not certain, that they did.

Q. Could they have fetched the *Rupert*, if they had kept the ſame Courſe?

A. No, not if they had kept the ſame Courſe; and, I can't ſay, Whether they could have done it at all, or not; but if they had hauled their Wind, they might have fetched greatly to Windward of us.

Q. How had you the Wind then?

A. We had the Wind Large.

Q. How had they the Wind?

A. They came up with the Wind Large.

Priſoner asked,

Q. Did the Shot of the *Spaniſh* Ships reach the Fireſhip?

A. I can't ſay:—By their Bearing away after their Admiral, they were nearer to the Fireſhip than they were to us.

Q. Did not the *Rupert* and *Royal Oak* bear down?

A. Yes, after the Fireſhip was blown up.

Q. Did the headmoſt or the Second of the *Spaniſh* Ships paſs the *Rupert*?—Are you poſitive, Whether they did or not, before they bore away?

A. I can't poſitively ſay; but I think, they muſt, or the Firſt at leaſt; becauſe the *Rupert* was certainly not ſo near us, as thoſe Ships were, when they bore away.

Court asked,

Q. Did you ſee the *Rupert* engage the Four *Spaniſh* Ships?

A. Yes.

Q. Did you ſee any other Ship engage them at the ſame time?

A. Yes, the *Royal Oak*.—And the *Royal Oak* appeared to be the leewardmoſt of the Two.

Priſoner asked,

Q. Did you ever ſee me haul off from thoſe Ships?

A. No; I did not obſerve you to haul off.

The Witneſs being then told to withdraw, he acquainted the Court, That he had particular Buſineſs in *London*; and that, if they had no farther Occaſion for his Attendance on this Tryal, he ſhould be glad of their Leave to go thither: And that he ſhould leave Word with the Proſecutors, that he might have Notice from them, when it was neceſſary for him to attend again.

The Priſoner objected to his having Leave; becauſe, he ſaid, he might have Occaſion to call him to anſwer ſome Queſtions, that he might think neceſſary to ask him.

The Court told the Priſoner, He might aſk him any Queſtions now.

The Priſoner replied, He could not recollect any thing now; for that a Man muſt be under great Confuſion, when his Life and Honour, and his All, was at Stake; but that he might hereafter be able to recollect ſomething.

The Witneſs ſaid, He could ſay nothing more than he had already declared: And

The Court gave him Leave to go to *London*; but directed him to leave Word with the Proſecutors, where he might be found, in caſe he ſhould be wanted.

Then he withdrew.

Lieutenant *Frederick Hyde*, of the *Marlborough*, was called in, and ſworn.

His Depoſition was read (as in Captain *Buriſh*'s Tryal, Page 45.): And he declared the ſame to be true.

Q. Where was you quartered?

A. On the Upper-deck.

Q. Acquaint the Court, what you know of the Behaviour of the *Rupert* during the Engagement.

A. She was to Windward; I think ſhe was to Windward of the *Dorſetſhire*, when we began to engage.

Q. Did you ever ſee the *Rupert* engaged?

A. No, I can't ſay that I did, I never minded her afterwards.

Q. What Time did you begin to engage?

A. About 1 o'Clock.

Q. Did you never ſee the *Rupert* afterwards?

A. No; I never obſerved her afterwards.

Q. Did you ſee the Fireſhip bear down?

A. Yes.

Q. Did any Ships bear down to your Aſſiſtance?

A. No.

Q. When you ſaw the *Rupert* to Windward, What was ſhe doing? Was ſhe under Way, or lying to?

A. I can't ſay.

Q. What other Ships did you ſee?

A. The *Dorſetſhire*, *Eſſex*, and *Royal Oak*.

Q. Did you never ſee the *Rupert* fire?

A. No.

Q. When you brought up to engage, was the *Rupert* in a Line with you?

A. No.

Q. What time did you leave off Firing?

A. About Four o'Clock.

Q. Did you take no notice of the Situation of the Ships after that time?

A. No; I was employed in Clearing between Decks.

Q. How do you know, that no Ship aſſiſted the Fireſhip?

A. Becauſe, when ſhe blew up, there was no Ship near her.

Q. How many of the Ships aſtern did you ſee then?

A. I ſaw the *Dorſetſhire*.

Q. When you ſaw the *Dorſetſhire*, could you ſee no other Ships aſtern of the *Dorſetſhire*?

A. Yes; I ſaw the *Eſſex*; but I did not obſerve the *Rupert*.

The Court called this Witneſs's Depoſition to be read again: Which was done accordingly.

Q. If

Q. If you had not ſeen the Situation of the Ships, How can you ſay, that they ought to have aſſiſted the *Marlborough*, and covered the Fire-ſhip?

No Anſwer.—But one of the Members going to obſerve to the Witneſs, what he had ſaid upon the laſt Tryal, the Priſoner objected to his doing ſo; and it was dropped.

Q. When your Maſts fell, did you not look out for Aſſiſtance?

A. Yes; I obſerved the next Ship to us, the *Dorſetſhire*.

Q. Did you ſee any Ship bear down to cover the Fireſhip?

A. No.

Then he withdrew.

John Baptiſta, Pilot of the *Marlborough*, was called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 30.): And he declared the ſame to be true.

Q. Did you ſee the *Rupert* at the Beginning of the Engagement?

A. They were all Four upon our Weather-Quarter?

Q. At what Diſtance?

A. At a great Diſtance, at the Beginning;—becauſe the Shot, which went over us from the *Real*, did not reach them.

Q. Did you obſerve the *Rupert* engage?

A. Between Three and Four o'Clock, after we had done Engaging, I ſaw the Two ſternmoſt Ships of the Four, engaging; and they were then upon our Weather-Quarter.

Q. Where was the *Namur* then?

A. To the South-eaſt, upon our Weather-Bow.

Q. When you ſaw the Two ſternmoſt Ships engaging, Did you obſerve the Enemy's Ships at that time?

A. Yes.

Q. How far were thoſe Two Ships then from the Enemy?

A. I can't tell; becauſe the Enemy were in our Wake.

Q. Were they near enough to do Execution?

A. I cannot ſay.

Q. Were the Four Ships to Windward of you then?

A. Yes.

Q. Were thoſe Two Ships as near the Four ſternmoſt *Spaniſh* Ships when they engaged them, as you was to the *Real*, when you engaged her?

A. No, no; they were not.

Q. If they had engaged thoſe Four *Spaniſh* Ships, as near as you engaged the *Real*, Would they not have been to Leeward of your Ship?

A. Yes, they would, becauſe thoſe Ships were to Leeward of the *Real*.

Q. Had thoſe Ships bore down only as far to Leeward as your Wake, Would they have been near enough to do Execution?

A. Yes, they would.

Q. How long did you ſee thoſe Two Ships engaging?

A. I can't ſay.

Q. Do you think thoſe Two Ships Firing upon the Enemy, hindered them from coming up to their Admiral, or to engage the *Marlborough* and *Namur*?

A. I can't ſay, becauſe thoſe Ships bore away, when their Admiral did.

Q. Did the Fire of thoſe Two Ships oblige the Enemy to bear away?

A. I believe it did.

Q. Did they bear away, becauſe their Admiral bore away; or was it becauſe of our Ships to Windward firing at them? Or, What was the Reaſon of thoſe Four *Spaniſh* Ships bearing away?

A. I believe, both becauſe of their Admiral's Bearing away, and the Ships to Windward engaging them.

Q. Did you ever obſerve either of the Four *Spaniſh* Men of War to have ſhot ahead of the *Rupert*, and to be nearer to you than the *Rupert* was?

A. No; I think the headmoſt of the Four *Spaniſh* Ships was almoſt abreaſt of the ſternmoſt of our Four Ships to Windward, but at a great Diſtance.

Q. What time was that?

A. After the *Marlborough*'s Maſts were gone.

Q. Did you obſerve any thing of our Four Ships, before you began to engage?

A. Yes.

Q. In what Poſition were they then?

A. They were in a Line with the Admiral and *Marlborough*, before we bore away; but none of them bore away; they were all upon our Weather-Quarter, when the Admiral called to Captain *Cornwall* to bear away to the *Real*, and he would aſſiſt him.

Q. After you bore away, Did thoſe Ships bear away with you to keep the Line?

A. No, no ſuch thing; nobody came to aſſiſt us; not one of them.

Q. If any of thoſe Ships had cloſed the Line with the *Marlborough*, Would they not have taken the Fire of the *Hercules* from the *Marlborough*?

A. If any Two, or all of them, had bore down, the *Real* would have been carried into *Mahon*.

Q. Did you never obſerve the Ships aſtern to be in a Line with you?

A. No.

Q. Was there any *Engliſh* Man of War to Leeward of you, during the Engagement?

A. No.

Q. Which of the Four Ships was moſt to Leeward? Was the *Rupert* or *Royal Oak* moſt to Leeward?

A. I believe, the ſternmoſt of the Four was moſt to Leeward; and then the next; and then the other Two:—So they appeared to me.

Aſked by the Priſoner,

Q. Did you ſee none of the Four Ships engage the *Hercules?*

A. No.

Q. What Diſtance might the headmoſt of the Four *Spaniſh* Ships be from the *Hercules,* when you firſt began to engage?

A. I can't tell;—a great Way.

Q. Did the *Hercules* wear upon the firſt Fire of ſome of our Ships, and ſtand towards the other Five?

A. No; ſhe was under the *Real*'s Lee-Quarter; and ſtaid there almoſt the whole time of the Engagement; and ſhe had a fair Mark at us.

Q. Were your Eyes always fixed upon the *Rupert?*

A. No: My Orders from Captain *Cornwall* were, to obſerve thoſe Four Ships, to ſee, if they came to our Aſſiſtance.

Q. Might not the *Rupert* be engaged with the Enemy, and you not know it?

A. I can't ſay; I believe ſhe might.

Q. How far diſtant was the *Rupert* from you?

A. I can't tell; I don't know the Diſtance.

Q. What did the *Rupert* do, if ſhe was not Bearing down? Did ſhe lie to, or continue on?

A. I can't ſay; I ſaw none of them bear down.

Q. How was the *Real?* How did ſhe bear from you, when you firſt bore down?

A. Upon our Quarter.

Q. Did you bring the Wind from your Larboard to your Starboard-Beam in Bearing down?

A. No, not ſo much as that: When we came to engage, the Four Ships were upon our Weather-Quarter.

Q. Was the *Real* upon your Quarter when you bore away?

A. She was almoſt abreaſt of us.

Q. Now, if the *Rupert* did not bear away, ſhe muſt have ſhot ahead to Windward, and abreaſt of you.

A. They did not bear away: We left them all on the Weather-Quarter.

Q. Was it poſſible for me to come down into the Line, and you not ſee me?

A. If any of you had come down to our Aſſiſtance, I muſt have ſeen you.

Q. Were not the *Princeſſa*, the *Somerſet*, the *Norfolk*, the *Namur*, the *Dorſetſhire*, and the *Eſſex*, nearer than the *Rupert* was to you to come to your Aſſiſtance?

A. I know nothing of the Ships ahead; nor what occaſioned the Ships ahead of the *Real* to bear away.

Q. If they had kept their Line, they would have been nearer to you than I was.

A. I can't tell any thing of the Ships ahead; my Orders were only to obſerve the Ships aſtern: If Captain *Cornwall* was alive, he'd tell you the ſame.

Q. Did any of the Five ſternmoſt Ships of the Enemy fire at you?

A. No; I do not know that they did.

Q. Do you think it was not better for me to ſtop them Five Sail coming up, than to go down to your Aſſiſtance?

Court. We are the beſt Judges of that.

Priſoner. My All is at Stake; I hope you will yourſelves aſk as Counſel for me, as well as againſt me.

Court. To be ſure, we ſhall.

Then the Witneſs withdrew.

Humphry St. Hill, Maſter's Mate of the *Marlborough,* was called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 32.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Upper-deck, at the Braces, on the Starboard-ſide.

Q. Acquaint the Court what you know of the *Rupert*'s Behaviour?

A. When firſt we bore down to engage the *Real*, the Four Ships aſtern of the *Marlborough* ſeemed to be tolerably well cloſed up; and after our Maſts fell, I obſerved the Motions of the Four Ships upon our Larboard-Quarter: They were all at a great Diſtance to Windward and aſtern; and the neareſt of the Four was the *Dorſetſhire.*

Q. When you began the Engagement, did you obſerve them?

A. I did not obſerve them, till after our Maſts went away; and then they were a great way to Windward; which ſhews, they had not bore down after us.

Q. Were they ever in a Line with you?

A. Yes; they were in a tolerable Line, before we broke the Line, and bore down to engage.

Q. Were they in a Line with you, when you began to engage?

A. No; they were greatly to Windward.

Q. Did you obſerve any of them engaged?

A. I ſaw the Smoke aſcend from the Two ſternmoſt.

Q. At what time?

A. About Three o'Clock—Between Two and Three o'Clock.

Q. What Ships did you take them to be, that you ſaw engaged?

A. I think the *Rupert* engaged the Headmoſt, and the *Royal Oak* the Second.

Q. At what Diſtance did they engage?

A. Not near enough to do Execution.

Q. Which of the Two was neareſt the Enemy, the *Rupert*, or *Royal Oak?*

A. The *Royal Oak.*

Q. Do

Q. Do you think they were then in a Line of Battle?

A. No.

Q. Were they at any other time?

A. No, at no other time, that I ſaw.

Q. When you ſaw the *Rupert*, and *Royal Oak*, fire at the Enemy, Did you take any Notice of the *Cambridge?*

A. No; I don't remember any thing of the *Cambridge.*

Q. How far was you from the *Rupert?*

A. About Two or Three Miles.

Q. At what time?

A. Between Two and Three o'Clock.

Q. Did you never ſee thoſe Two Ships engage nearer than at firſt?

A. No, never—We had no Aſſiſtance from any of thoſe Four Ships: I only looked now-and-then at them, to ſee if any of them were coming to our Aſſiſtance.

Q. After you ſaw the *Rupert* and *Royal Oak* engage the Two headmoſt of the *Spaniſh* Ships, Did you obſerve the Enemy to bear away?

A. No; they appeared, to me, to ſteer directly for their Admiral to cloſe the Line with him; and ſeemed to be cloſe upon a Wind.

Q. Juſt at the time you ſaw the *Rupert* fire at thoſe Ships, did you obſerve them to edge away from that Fire?

A. No.

Q. Do you think, that the Fire of the *Rupert* and *Royal Oak* could annoy them, in ſuch a Manner, as to hinder them from getting up to cloſe with their Admiral, or to fire at the *Marlborough*, or Fireſhip?

A. No, I think not.

Q. Do you think, that, when they bore away, it was from the Fire of our Ships?

A. I believe not—I believe it was impoſſible for them to receive Damage from thoſe Two Ships, they were at ſo great a Diſtance: And I believe their Shot could not reach.

Q. When they bore away, what could be the Reaſon of their doing ſo?

A. I did not obſerve, that they bore away, till their Admiral did; and then they followed him.

Q. Did you ſee the Fireſhip bear down?

A. Yes.

Q. Did you ſee any of thoſe Four Ships cover her?

A. No.

Q. Did you ſee the headmoſt of the Four *Spaniſh* Ships fire at the Fireſhip?

A. I did not obſerve.

Q. Could the *Rupert* have come to an Engagement, ſooner than ſhe did, with thoſe Ships?

A. I believe, not—There was no Ship for her to engage, till about an Hour after we engaged.

Q. Did you obſerve any of the Four ſternmoſt *Spaniſh* Ships to have ſhot ahead of the *Rupert?*

A. I did not obſerve, that any of them were ahead of the *Rupert*—I could not be a proper Judge of it, in my Situation.

Q. What Ship was it came up, within the Hour you mention, that the *Rupert* might have engaged with?

A. I believe, the headmoſt of the Four ſternmoſt *Spaniſh* Ships.

Q. What became of that Ship?

A. I can't tell—When the *Spaniſh* Admiral bore away, the others bore away after him.

Q. Do you take the *Real*'s Bearing away to have been occaſioned becauſe the *Spaniſh* Admiral thought his Four Ships, coming up, were in Danger of being deſtroyed by our Four Ships, that lay to Windward of the *Marlborough?*

A. No—I believe ſhe was ſo ſick of the Action, that ſhe bore away, to ſecure herſelf.

Q. Might not the Apprehenſions of the Fireſhip's coming down be the Occaſion of it?

A. No; ſhe had bore away, before the Fireſhip came down.

Priſoner asked,

Q. You ſay, your Ship was diſtant Two or Three Miles from the *Rupert?*

A. Yes.

Q. Do you believe, at the Diſtance you was from the *Rupert*, that you might not be deceived, in the Diſtance you imagined us to be from the Enemy?

A. I was a much better Judge of the Diſtance we were from you, than of the Diſtance you was from the Enemy—But you appeared to me, to be ſo far off, that your Shot could not do Execution.

Q. Did you ſee the Shot fall ſhort?

A. No; I did not ſee the Shot.

Q. Were the Four ſternmoſt *Spaniſh* Ships abaft the Beam of the *Rupert?*

A. Yes.

Q. Were the *Spaniſh* Ships in a Line with their Admiral?

A. They were very little to Leeward of their Admiral.

Then he withdrew.

Samuel Burthall, Boatſwain of the *Anne Galley* Fireſhip, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 20.): And he declared the ſame to be true.

Q. Acquaint the Court, of what you know of the *Rupert*'s Behaviour, in the Engagement.

The Witneſs gave an incoherent Account, of what paſſed on board the Fireſhip, before ſhe bore down; and ſaid, That, in Bearing down, as they paſſed the *Dorſetſhire*, they hailed her to bear down with them: And that Anſwer was made, They had no Powder filled.

Q. What did you do, when you left the *Dorſetſhire?*

A. We went directly forwards for the *Real.*

Q. Did you come near the *Rupert*, when you paſſed the *Dorſetſhire?*

A. No.

Q. Did the *Rupert* bear down, to cover you?

A. No; I did not ſee her—When firſt I ſaw the *Rupert*, it was when I got on board the *Dorſetſhire*, in the Evening—The Fireſhip was ſunk by a Shot that came in at her Larboard-Bow.

Priſoner aſked,

Q. How was the Fireſhip ſunk?

A. Juſt as we were ranging up upon the *Real*'s Starboard-Quarter, they brought Five or Six Guns to bear upon the Fireſhip; and, I believe, it was the Shot from thoſe Guns, that ſunk the Fireſhip.

Court asked,

Q. Did you never ſee the *Rupert*, till you was on board the *Dorſetſhire?*

A. No.

Q. Did you ſee any of the Ships aſtern of the *Dorſetſhire?*

A. No.

Q. When you came on board the *Dorſetſhire*, were any Ships engaged?

A. I believe the *Namur* was.

Q. Was the *Marlborough?*

A. I believe, the *Marlborough* was then defeated.

Priſoner asked,

Q. Did you obſerve the Four *Spaniſh* Ships coming up?

A. Yes.

Q. Did they fire at you?

A. Yes.

Q. Did any of their Shot come over you?

A. No—They fell near; but I ſaw none go over.

Q. Why do you depoſe, That the *Rupert* was not in a Line?

A. I know nothing at all of the *Rupert:* I did not ſee her, till I got on board the *Dorſetſhire.*

Q. What Time was that?

A. About Four or Five o'Clock.

Q. Was the *Rupert* as far to Windward as the *Eſſex?*

A. Yes.

Q. What was ſhe doing, when you ſaw her?

A. We were Wearing.

Q. Did you ſee the *Rupert*, when the Fireſhip was Bearing down?

A. I ſaw ſome Ships in a Line; but I don't know what Ships they were.

Then he withdrew.

Captain *Marſh*, of the *Winchelſea*, was called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 40.): And he declared the ſame to be true, to the beſt of his Knowlege.

Q. Did you ſee the *Rupert*, when the Engagement began?

A. Yes; preſently after the Admiral began to engage, I ſaw them bear down; but, to the beſt of my Knowlege, they brought to, before they came to form the Line.

Q. How did the Admiral engage; upon a Wind, or Large?

A. I think, he brought to: I am not certain what Sails he laid aback.

Q. Did you ſee the *Rupert* engage any *Spaniſh* Ships?

A. To the beſt of my Knowlege, about Four o'Clock, I ſaw her fire.

Q. Was ſhe then in the Line?

A. I can't ſay, whether ſhe was, or not, at that time.

Q. Was ſhe within point-blank Shot?

A. I can't judge, whether ſhe was, or not.

Q. Was ſhe within a proper Diſtance to do Execution?

A. I don't know—I am not certain.

Q. At Two o'Clock, when you firſt ſaw her, was ſhe in a Line?

A. I think not—To the beſt of my Knowlege, ſhe was to Windward then.

Q. You ſaw Four of the Enemy's Ships aſtern?

A. Yes.

Q. How many of thoſe *Spaniſh* Ships had ſhot up ahead of the *Rupert*, between Four and Five o'Clock, juſt before they wore?

A. I don't remember any thing of their Wearing; or whether any of them were ahead of the *Rupert*, or not.

Q. Do you remember nothing of thoſe Ships coming ahead or abreaſt of the *Rupert?*

A. I remember their coming up; but I don't remember any thing of their being ahead or abreaſt of the *Rupert.*

Court. As you was appointed to repeat Signals, and, from your Situation, could well obſerve the Motions of the Ships; it is very extraordinary, that you know nothing.

Witneſs. I had no Orders to obſerve any thing but the Admiral's Signals.

Q. In your Depoſition, you charge thoſe Gentlemen with Failure of their Duty; and now you remember nothing. Acquaint the Court, of all that you know of the *Rupert.*

A. When the Admiral firſt bore away, the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, bore away after him; and brought to, to Windward of him: But, as to their Behaviour afterwards, I can't ſay; for I made no Obſervation of what they did afterwards.

Preſident. I wonder you did not, as you had nothing elſe to do, but to obſerve.

Q. What time did you ſee the *Rupert* engaged?

A. I believe, about Four o'Clock.

Q. Did you obſerve the *Marlborough*'s loſing her Maſts?

A. Yes.

Q. Did

Q. Did you obſerve any Signal made by the Admiral, between the Time of beginning to engage, and the Time of Wearing, for any Ship to go nearer the Enemy, to give Aſſiſtance to the *Marlborough*, or to cover the Fireſhip?

A. No; I ſaw no Signal from the Admiral, but the Signal for the Fireſhip to bear down, till the Signal for Engaging was hauled down, and the White Flag hoiſted.

Priſoner asked,

Q. What Diſtance was you from the Admiral?

A. A ſmall Mile:—But I am not certain of the Diſtance.

Q. Was you abreaſt of the Admiral?

A. I think I was, to the beſt of my Knowlege:—I am not certain.

Priſoner. I ſubmit to the Court, Whether he could be poſitive, that I was not in a Line, as he was abreaſt of me—Lay Three Pens, One after the other, and let him ſtand exactly abreaſt of them, and ſee, if he can judge, whether they are in a Line, or not.

Witneſs. Don't miſtake me; I am not poſitive: I only ſay, That I apprehend, you was not in a Line.

Then he withdrew.

Priſoner. I beg to know of the Court, Whether I have a Right to ſummon Admiral *Mathews*, to appear as a Witneſs for me, at my Tryal.

Court. As he is charged with Miſconduct in the ſame Action, he can't properly be an Evidence: And the Lieutenants of the *Dorſetſhire* were refuſed, when they deſired Leave to ſummon their Captain, for the ſame Reaſon.

Priſoner. He is a material Witneſs for me; and I ſhould have been glad, if the Court had given me Leave to ſummon him.

Then the Court adjourned till Monday *Morning next, at Eight of the Clock.*

The Second Day upon Captain AMBROSE's *TRYAL,*

On Board His MAJESTY's *Ship the* London, *at* Chatham,

MONDAY, the 21ſt of *October*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, as were on *Friday*.

The Priſoner was brought in by the Marſhal; and the Witneſſes ordered to be called in.

Lieutenant *Hugh Palliſſer*, of the *Eſſex*, was called in, and ſworn.

His Depoſition was read (as in Captain *Buriſh*'s Tryal, Page 42.): And he declared the ſame to be true.

Q. You ſay the *Rupert* was never in the Line?

A. No:—She was not.

Q. Did you ſee her fire?

A. Yes.

Q. Was ſhe within Point-blank?

A. No, not when I ſaw her.

Q. Where was you quartered?

A. Upon the Lower-deck.

Q. What time did you firſt ſee her?

A. At ſeveral different times, from firſt to laſt.

Q. Did you ſee her when ſhe firſt hauled up?

A. I ſaw her ſoon after ſhe hauled up:—She hauled up very near under our Quarter.

Q. Did you ſee the Fireſhip bear down?

A. Yes.

Q. Did you ſee the *Rupert* attempt to cover her?

A. No.

Q. Did ſhe ever attempt to aſſiſt the *Marlborough*?

A. No:—She went down to her at Night; when ſhe wore.

Q. When ſhe brought up, Was ſhe near you?

A. Yes, very near:—When ſhe ſprung her Luff, ſhe was almoſt under our Lee-Quarter; but ſhe ſoon after fell farther aſtern, and to Leeward; but not ſo far to Leeward, as to form the Line.

Q. Can you recollect at what time of the Day the *Royal Oak* hauled off from the Three Sail of *Spaniſh* Men of War?

A. I can't tell.

Q. Do you remember the *Royal Oak*, or *Rupert*, driving the firſt Ship they engaged, before the Wind?

A. No:—I never ſaw any of the *Spaniſh* Ships, aſtern of their Admiral, put before the Wind.

Q. Did you ſee the *Royal Oak* engage them?

A. Yes.

Q. Was the *Rupert* then engaged?

A. I don't know that ſhe was:—I don't remember, that I ſaw her fire then.

Q. Where was the *Rupert* then?

A. She was to Windward of the *Royal Oak*.

Q. How far to Windward?

A. The *Rupert* was, at that time, a full long Mile farther from the Enemy, than the *Royal Oak* was; but not ſo far to Windward.

Q. At what time was that?

A. I believe, about an Hour after the Admiral began to engage.

Q. Did you ſee the *Royal Oak* engage any ſingle Ship?

A. I did not.

Q. Was there no Ship of the *Spaniards* for you to engage, when you brought up firſt?

A. If we had continued going down in our Station, we might have engaged any one of thoſe Five *Spaniſh* Ships.

Q. When you hauled your Wind, Was there any Ship upon or before your Beam?

A. No:—When we brought up at firſt, we brought the Enemy right aſtern of us: That was, when the *Rupert* ſprung her Luff under our Lee-Quarter; but in the Evening the *Rupert* bore away before we did.

Q. Did the *Rupert* bear away before the Admiral wore?

A. Yes:—But I can't tell exactly how long before; but I ſaw her fire very briſkly.

Q. Was ſhe in a Line with the *Namur* then?

A. I can't ſay:—She was not ſo far to Leeward, as the Admiral was, when he began to engage.

Q. Was ſhe ever in a Line with the *Namur?*

A. I believe ſhe might be in a Line with the *Namur*, when the Admiral was hauled off the fartheſt.

Q. Was the *Namur* conſiderably to Windward of the *Marlborough* then?

A. Yes.

Q. At what time was that?

A. I believe, about Half an Hour before the Admiral made the Signal, and wore.

Q. Was the *Rupert* firing then?

A. Yes:—She was then firing very briſkly.

Q. Was ſhe then within Gun-ſhot?—Was ſhe within point-blank Shot?

A. No, I don't think ſhe was.

Q. What time was that?

A. When ſhe had bore away; about Half an Hour before the Admiral made the Signal, and wore.

Q. Was ſhe then engaging briſkly?

A. Yes.

Q. Did you ſee the *Royal Oak* engaged within Point-blank?

A. She was pretty near it.

Q. Was it in the *Rupert*'s Power to bear down ſo near the Enemy, as the *Royal Oak* did?

A. Yes, undoubtedly:—I ſaw nothing to hinder her.

Q. Was ſhe any way diſabled?

A. No:—She could not be diſabled, becauſe ſhe had had no Engagement before that.—The *Royal Oak* had bore down, and hauled up again.

Q. When you ſaw the *Rupert* fire ſo ſmartly, Whereabouts did the headmoſt of the Five *Spaniſh* Ships appear to you to be, with reſpect to the *Rupert?*

A. I believe One or Two of them were ſhot paſt her; for they were firing at the Fireſhip.

Q. How did the *Rupert* appear then, with reſpect to your Ship?

A. Abreaſt of us; and about half a Mile nearer the Enemy than we were.

Q. Did you fire then?

A. Yes:—I fired ſome Shot at the Second of the *Spaniſh* Ships, who was then juſt abreaſt of us; but the Shot fell ſhort a long Way.

Q. What time of the Day was that?

A. About Four o'Clock.—It was when the *Rupert* had bore away, before the Admiral made the Signal to wear.

Q. Did the Enemy return any Shot to you?

A. No.

Q. Did you ſee any of the Enemy's Shot go over the *Rupert?*

A. No; not at that time.

Q. Was it your Opinion, If the *Rupert* and *Royal Oak* had engaged thoſe Ships as properly as they ought to have done, That they would have ſtopped thoſe *Spaniſh* Ships from getting up, till the Vice-Admiral's Diviſion could have come up?

Priſoner. I apprehend this not to be a proper Queſtion; becauſe the *Royal Oak* has been cenſured already.

Court. We have a Right to ask any Queſtions we think fit:—You have been indulged with aſking Queſtions; and are at Liberty to aſk any Queſtions you judge proper.

Anſwer from the Witneſs. Had we all gone down, we might have attacked them with the ſame Number: There would have been Five of our Ships to the Enemy's Five Ships; the *Eſſex*, *Rupert*, *Royal Oak*, *Dunkirk*, and *Cambridge*.

Q. Were the *Dunkirk* and *Cambridge* near enough to you to have attacked thoſe Ships?

A. They would have been near enough, had they kept in their Stations.—If we had been in our Stations, we could have ſtopped them; but I do not think, that the *Royal Oak* and *Rupert* only were ſufficient to have ſtopped the Five Sail.

Q. Did you ever ſee the *Hercules* wear to aſſiſt the Four Ships engaged by the *Royal Oak* and *Rupert?*

A. No:—I never did ſee her wear to aſſiſt thoſe Four Ships.

Q. Did you ever ſee any of the Enemy's Shot, fired at the *Rupert*, go over her?

A. No, not till we wore.

Q. What Diſtance were the *Cambridge* and *Dunkirk* from the *Royal Oak?*

A. I can't ſay:—I remember very little of the Situation of the *Cambridge*.

Q. Did you ever ſee the *Cambridge* bear under the *Royal Oak*'s Stern?

A. I ſaw her bear down under the *Royal Oak*'s Starboard-Quarter, and engage the Enemy juſt before Wearing.

Q. In what Situation was the *Rupert* then?

A. The *Rupert* was then firing at the Enemy.

Q. Do

Q. Do you remember, when the Admiral wore, how many of thoſe Four or Five of the Enemy's Ships had paſſed before the Beam of the *Rupert*?

A. I can't ſay exactly.

Q. You was to Windward of the *Rupert*, and could ſee how many of the Enemy were open ahead of her?

A. I don't remember how many were open ahead, or how many were open aſtern of her.

Q. Were any of them abreaſt of you?

A. When I fired Two Shot at the Second Ship, I don't remember, whether ſhe was open ahead or aſtern of the *Rupert*.

Q. Was the *Rupert* then to Leeward of you?

A. Yes, ſhe was to Leeward: She was about Half a Mile nearer the Enemy; it could not be more, becauſe of our Wearing ſoon after.

Q. Was the *Rupert* then abreaſt of you, or upon your Quarter?

A. She was then abreaſt of us.

Q. How was the Admiral then, with reſpect to you?

A. Upon our Lee-Bow.

Q. Was not the *Rupert* then between you and the Enemy?

A. Yes: — She was half a Mile nearer the Enemy.

Q. Did you obſerve any of the Five *Spaniſh* Ships to ſhorten ſail from the Firſt?

A. No:—I think they kept their Courſe up towards their Admiral with the ſame Sail.

Q. If the *Rupert* had gone down in a regular Line with the Admiral, towards the Enemy, and brought up in a Line, How long would it have been, before ſhe would have had a Ship properly to engage?

A. I believe, if they had bore down under an eaſy Sail, by the time ſhe had got into her Station, there would have been a Ship far enough ahead for her to have engaged.

Q. Do you think the Interruption thoſe Ships met with from the *Rupert* and *Royal Oak* ſtopt them from getting up?

A. No:—I believe not.

Q. You ſay, The *Rupert* was not within point-blank Shot.

A. No; ſhe was not.

Q. Then, from the Beginning of the Engagement, till the Admiral wore, Did you ever obſerve the *Rupert* annoy the Enemy in any Shape whatſoever?

A. She did fire a great deal:—But, I think, not within a Diſtance to do Execution.

Q. Did you ſee any Shot of the Enemy go over the *Rupert*, as you lay abreaſt of her?

A. No.

Q. Did you ſee the Fireſhip go down?

A. Yes.

Q. Did you ſee the Enemy fire at her?

A. Yes: — The headmoſt of the Five Sail did.

Q. Was the *Rupert* then within Gun-ſhot of the Enemy?

A. No.

Q. Was the *Eſſex*?

A. No:—She was farther to Windward.

Q. Was the *Eſſex* always to Windward of the *Rupert*?

A. Yes.

Q. Did the *Eſſex* receive any Shot from the Enemy?

A. Yes:—At firſt ſome of the Enemy's Shot reached us; but, from that time, we hauled off.

Q. How was the *Rupert* from you then?

A. She was cloſe upon our Lee-Quarter.

Q. And you hauled off afterwards?

A. Yes: — From that Time we hauled off, and continued to do ſo; and the *Rupert* hauled off too.

Q. What was the Meaning of your Hauling off?—Had you received any Damage; or did you perceive, that the *Rupert* had received any?

A. No.

Q. Did the *Rupert* continue Hauling off?

A. Yes, till towards the Evening; when ſhe bore away again, long before we did, and engaged the ſternmoſt *Spaniſh* Ships, but at too great a Diſtance: — She bore away when ſhe fired ſo briſkly.

Q. What Diſtance of Time might there be between the *Rupert*'s firſt Bringing up, and her Bearing down again in the Evening?

A. I did not ſee, that ſhe bore away till about Half an Hour before the Admiral made the Signal to wear.

Q. Did you obſerve any Damage the *Rupert* had received to prevent her going down into her Station?

A. No:—I did not obſerve her to be damaged any time of the Day.

Aſked by the Priſoner,

Q. You ſay, Two *Spaniſh* Ships paſſed the *Rupert*:—I would ask, When you wore in the Evening, did you not engage the Five *Spaniſh* Ships aſtern? And how was it poſſible, if they once got ahead of the *Rupert*, for the *Rupert* to wear, and engage them in paſſing?

A. The *Rupert* had bore away, and was fireing at thoſe Ships upon the Admiral's Wearing.

Q. If thoſe Ships once paſſed me, How could I wear, and go under the Admiral's Stern, and engage thoſe Five Ships in paſſing?

A. They were not abreaſt of you, when you fired at them: — Though Two of thoſe Ships had paſſed the *Rupert*, yet Three were left, whom ſhe might bear down abreaſt of.

Q. You ſay I was engaged with the Five Ships; that Two of them paſſed me; that I was Half a Mile from you; and that I was out of Point-blank:—Then, How could I ſhoot up to you, wear, and engage the Five Ships in paſſing?

A. No: — You did not ſhoot up to us; we ran down to you.—I don't ſay poſitively Two had paſſed you, but I believe Two had.

Q. Did you ever ſee the *Royal Oak* engage a ſingle Ship?

A. No.

Q. How far were the Five ſternmoſt Ships of the Enemy from you, when the Admiral began to engage?

A. I believe, Two or Three Miles, as near as I can judge; but not ſo much aſtern of us:—They were aſtern, and to Leeward withal.

Q. How many Ships were there aſtern of the *Hercules?*

A. Five.

Q. What Sail had thoſe Five Ships out?

A. The headmoſt had all the Sail ſhe could ſet; the Second, I believe, had the ſame:—But I can anſwer poſitively only to the Firſt.

Q. Did they all come up together in a Line?

A. They appeared to me ſo.

Q. How did they bear from you then? And how did your Ship's Head lie?

A. We were brought to, cloſe to the Wind; and, by ſpringing our Luff, brought them right aſtern of us.

Q. Did the *Royal Oak* fire upon the Enemy before the *Rupert?*

A. Yes:—I ſaw her fire firſt.

Q. Were the *Royal Oak* and *Rupert* firing at them at the ſame time?

A. Yes, in the Evening, when you was fireing ſo briſkly.

Q. As the *Rupert* was between you and the Enemy, How could you diſtinguiſh, whether ſhe was near enough to the Enemy, or not? How could you diſtinguiſh, when a Ship was abreaſt of you, whether ſhe was near enough to do Execution?

A. I think I could, to form a Judgment: But, farther than that, my Firing thoſe Two particular Shot, which I fired myſelf, and they fell ſhort, convinced me of the Diſtance: And, I think, we were then Two Miles diſtant from the Enemy; and you was half a Mile nearer than we.

Q. Then I was a Mile and an Half off.

A. Yes:—We were about Two Miles, and you a Mile and an Half.

Q. From the Situation you was in, ſo far to Windward, do you think it was poſſible for you to judge, whether the *Rupert* was in a Line with the Admiral, or not?

A. Yes:— You was ſo near to us, that I am very ſure you was not in a Line.—I could very well judge of it till towards the Evening, when you bore down nearer to the Enemy, and farther from us.

Q. If the *Rupert* had gone down in a proper Line with the Admiral at firſt, Would there have been a Ship for her to engage at that time?

A. Yes:—It is my Opinion, if ſhe had gone down, under an eaſy Sail, into her proper Station, that there would have been a Ship for her to have engaged.

Q. What do you mean by her proper Station?

A. In a Line with the Admiral.

Q. If the *Rupert* had gone down in a Line with the Admiral, and engaged the headmoſt of the Five Ships, What Diſtance muſt ſhe have then been from you, ſuppoſing you had gone down in the Line alſo?

A. At a proper Diſtance, a Quarter of a Mile off.

Q. How far was the *Hercules* from the other Five Ships?

A. About Three Miles:—But thoſe Ships were crouding up; and, conſequently, the Diſtance leſſened continually.—And there were the *Dorſetſhire* and *Eſſex*, if they had bore down in their proper Stations, would have taken up Part of the Space between the *Hercules* and the headmoſt of the Five *Spaniſh* Ships coming up:—And, if you had gone down with an eaſy Sail, I believe, by the time you would have got down into a proper Station, that the headmoſt Ship might have been up with you.

Q. If you was ſo near the Enemy, as that their Shot reached you from the *Hercules*, Was it poſſible, that, if I had gone down in the Line, there would have been any Ship for me to have engaged?

A. I judge the *Eſſex*'s Diſtance from the *Hercules* to have been Two Miles; becauſe, when that Shot reached us, ſhe was then firing her Weather-Guns; which would, at leaſt, carry a Shot that Diſtance.

Q. How far will Shot go that are fired from Weather-Guns?

A. I believe, at leaſt, Two Miles.

Court to the Priſoner,

Your aſking theſe Queſtions takes up a great deal of Time, and do not ſeem very proper.

Priſoner. If I propoſe any Queſtion that is not proper, I hope the Court will ſtop me: I will take up as little Time as I can; but I think them material Queſtions, and hope the Court will indulge me.

Q. Do you think, in the Station you ſaw the *Rupert*, that the Five Ships, according to the Courſe they ſteered, could not have weathered the *Rupert*, if they had hauled their Wind?

A. In the Station ſhe was in, if they had kept their Wind cloſe, inſtead of going away large, down to their Admiral, as they did, I believe they might have fetched the *Rupert.*

Q. Did you wear ahead, or aſtern, of the Firſt of the Five *Spaniſh* Ships?

A. When we wore, they were put before the Wind; and we wore, and paſſed aſtern of them.

Q. When you wore, Did you engage them as they paſſed?

A. Yes, with our Larboard-Guns.

Then he withdrew.

Priſoner. I have One Thing to offer to the Court: As all theſe Gentlemen have been already examined, and croſs-examined, upon former Tryals, and well know their Story, I beg the Court to conſider how hard my Caſe is, and that it will be impoſſible for me to find out any Miſtakes they are guilty of: Therefore I would beg of every Gentleman, that is a Member of the Court, to deſtroy the Minutes they have taken upon thoſe Tryals, or, at leaſt, not look

look them over, till this Tryal is over; that they may have no Influence, in regard to the Sentence that may be paſſed upon my Conduct.

One of the Members replied,

I believe every Gentleman, that is a Member of the Court, will not only deſtroy the Minutes taken upon former Tryals, but endeavour to forget, as much as poſſible, every thing that has paſſed upon former Tryals.

Priſoner. I mentioned this, not that I have the leaſt Suſpicion of the Court; but becauſe I hope to prove, That you have never yet had a right Underſtanding of this Matter.

Preſident. You are not to dictate to the Court: Every-body here are Perſons of Honour, and will do you Juſtice.

Priſoner. I don't at all doubt it.

Lieutenant *Peyton*, of the *Eſſex*, called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 50.): And he declared the ſame to be true.

Q. You ſay the *Rupert* never was in a Line with the Admiral?

A. Yes.

Q. Did you ever ſee her fire?

A. Yes; between Three and Four o'Clock.

Q. At what Ships?

A. At the *Spaniſh* Ships coming up.

Q. Was ſhe within Point-blank?

A. No; I think ſhe was not.

Q. Did you ſee the *Marlborough* when ſhe loſt her Maſts?

A. Yes.

Q. Did you ſee the *Rupert* bear down to give her any Aſſiſtance?

A. No; ſhe did not bear down near enough: The *Rupert* was to Windward.

Q. Did you ſee the Fireſhip go down?

A. Yes.

Q. Did the *Rupert* offer or attempt to cover her?

A. No; I did not ſee her do ſo.

Q. Did you ever ſee the *Rupert*, at any time of the Engagement, in a Line with the Admiral?

A. No, not till the Evening:—I can't tell what ſhe might be when they wore.

Q. Did you ever ſee her within point-blank Shot of the Enemy, from the Beginning of the Engagement to the Time of the Admiral's Bearing away?

A. No.

Q. If ſhe had bore down, ſo as to have been within point-blank Shot, when the headmoſt of the Five *Spaniſh* Ships came up, Would ſhe have been to Leeward of the Line?

Witneſs. At what time?

Court. When the headmoſt of the Five Ships came up.

A. I can't very well judge.

Q. How far was the *Eſſex* to Windward of the Line?

A. A good Way—About Three-quarters of a Mile, or more.

Q. How far was the *Rupert* to Leeward of the *Eſſex*?

A. About Two Cables Length and an Half.

Q. What time did you obſerve the *Rupert* to fire moſt?

A. Between Three and Four o'Clock.

Q. What do you apprehend ſhe fired at?

A. At the Five *Spaniſh* Ships that were coming up.

Q. At which of them?

A. I can't ſay which of them; they being pretty near together.

Q. Did you obſerve any of thoſe Five Sail ever to paſs before the Beam of the *Rupert*?

A. I can't tell whether they did or no.

Q. Did you ever obſerve them to ſhorten Sail, or alter their Courſe, upon account of the Fire from our Ships?

A. No: I believe our Ships were at too great a Diſtance for their Fire to occaſion any ſuch Effect.

Q. Was there Wind ſufficient for the *Rupert* to have gone down, and engaged properly, as ſhe ought to have done?

A. Yes.

Q. When the *Rupert* made that warm Fire, between Three and Four o'Clock, Did you obſerve the Enemy's Shot fly over her?

A. No.

Q. Did you ſee them fall ſhort?

A. No: I can't recollect to have obſerved any Shot at all.

Q. Was ſhe within Gun-ſhot?

A. I think not: If I could judge by the Diſtance, ſhe could not be within Gun-ſhot.

Q. Did you ſee the *Royal Oak* fire at the Enemy?

A. Yes.

Q. Did you then ſee the *Rupert?*

A. Yes, I muſt have ſeen her, to be ſure.

Q. When you ſaw the *Royal Oak* fire, Was ſhe, do you think, within Point-blank?

A. No, I think not.

Q. How far was the *Rupert* to Windwadoſr the *Royal Oak?*—In what Poſition was the *Rupert?*

A. She was about Two Cables Length ahead, and to Windward of the *Royal Oak*;—upon the *Royal Oak*'s Weather-Bow.

Q. Was ſhe ſo much farther from the Enemy?

A. Yes.

Q. When you hauled your Wind, did the *Rupert* haul her Wind alſo?

A. I was then at my Quarters, and did not obſerve; but when the *Marlborough*'s Maſts were gone, ſhe was to Windward.

Q. During what Space of Time did you ſee the *Rupert?*

A. I was, at firſt, down at my Quarters; but afterwards, having nothing to do, I was moſt Part of the Time upon the Quarter-deck, and muſt have ſeen her frequently.

Q. When you fired, What Ship did you fire at from your Quarters?

A. At the *Hercules.*

Q. Did you never fire at the Five ſternmoſt Ships?

A. No, not till after Wearing.

Q. You hauled off at firſt: Did the *Rupert* haul off at the ſame time? Or how long afterwards was it, before ſhe bore down, after that Hauling off?

A. I can't tell.

Q. Did you obſerve the *Rupert* bear down nearer the Enemy, at firſt, than the *Eſſex?*

A. Yes: She was to Leeward of us, upon our Quarter.

Q. Did ſhe bear down conſiderably?

A. I did not obſerve her bear down at all, till the Admiral bore away, after the Fireſhip was ſunk.

Q. Did the Shot reach you, from the Enemy?

A. Yes, at firſt, from the *Hercules*;—but we afterwards hauled off, out of Reach of the Shot.

Q. Did the Enemy's Shot damage you?

A. No.

Q. Where was the *Rupert?*

A. She was the next Ship to us aſtern.

Q. Could the *Rupert* have bore down nearer, to have engaged the *Hercules?*

A. Yes, undoubtedly; there was Room enough: She might have gone paſt us, and engaged the *Hercules.*

The Court then, as uſual, told the Priſoner, if he had any Queſtions to ask this Witneſs, he might ask them.

Priſoner ſaid, He had a great many Queſtions to ask, if the Court thought proper.

The Court ſaid, He might ask what Queſtions he pleaſed.

Priſoner aſked,

Q. I would ask you, How long you kept Firing at the *Hercules?* Becauſe you ſay, I might have paſſed you, and gone up to the *Hercules.*—How long did you keep Firing at the *Hercules?*

A. Till the *Marlborough*'s Maſts fell.

Q. Did your Shot reach her?

A. I believe not.

Q. Did their Shot reach you?

A. Yes, at firſt; but we kept Hauling off.

Q. What made you ceaſe Firing?

A. When the *Marlborough* loſt her Maſts, we left off Firing; and I then went upon Deck.

Q. Was there any Ship for the *Rupert* to engage, at firſt, if ſhe had bore down in a Line with the Admiral, when He did?

A. No; unleſs ſhe had engaged the *Hercules.*

Q. Was the *Dorſetſhire* firing at the *Hercules* from the firſt of the Engagement, till the *Marlborough*'s Maſts were gone?

A. Yes, and the *Eſſex* alſo.

Q. If you had commanded the *Rupert*, would you have thought it more for the Service, to have lain to have received the *Spaniſh* Ships coming up, or to have paſſed between your Fires to the *Marlborough?*

Court. That is not a proper Queſtion: We are the beſt Judges of that.

Priſoner. If it is not a proper Queſtion, I hope you'll excuſe me.

Q. You ſay my Shot fell ſhort: Did you ſee them fall ſhort?

A. I did not ſee your Shot fall ſhort—From the Diſtance you was, I believe you was out of point-blank Shot.

Q. Did you ſee any of my Shot fall ſhort?

A. I don't remember to have ſeen any; I only judge from the Diſtance.

Q. Were thoſe Five *Spaniſh* Ships that were coming up, to Leeward of their Admiral?

A. I believe rather to Leeward; but very little.

Q. When you ſaw the *Rupert* and *Royal Oak* engaging, was the *Rupert* to Leeward, either of the *Namur* or *Marlborough?*

A. I believe ſhe was not.

Q. If the *Spaniſh* Ships had held their Courſe they firſt ſteered, when you ſaw the *Rupert* and *Royal Oak* engaging them, Do you think they could have weathered the *Rupert?*

A. I believe they might have gone very near to have done it.

Q. As the *Rupert* was at firſt under your Lee-Quarter, Can you tell, how ſhe came afterwards to be ſo far from you? Was it by your Hauling out of the Line, or by her Bearing away?

A. I don't know.

Q. You ſaw the Fireſhip, when ſhe was going down to burn the *Real?*

A. Yes.

Q. Was the *Rupert* engaging thoſe Five Ships, and between them and the Fireſhip, when the Fireſhip blew up?

A. She was not directly between them; but I did not much obſerve how ſhe was.

Q. Was the *Rupert* ahead ſtanding for the Fireſhip, when the Fireſhip blew up?

A. I can't ſay.

Q. Was not the *Rupert* between the *Eſſex* and the Fireſhip?

A. She was not directly ſo.

Q. Was ſhe nearer the Fireſhip, than the Five *Spaniſh* Ships were?

A. No—I believe the Five *Spaniſh* Ships were rather nearer the Fireſhip, when ſhe blew up—I believe the headmoſt of thoſe Five was nearer to the Fireſhip than you, when ſhe blew up; but I can't be certain.

Q. Did any of the Five *Spaniſh* Ships paſs the *Rupert?*

A. I can't ſay; I did not obſerve.

Q. When the *Rupert* was engaging thoſe Ships, Were they upon her Quarter, or upon her Beam?

A. They were rather upon her Quarter, when ſhe was firing at them.

Priſoner. I think the Gentleman in his Depoſition ſays, That my Shot fell ſhort; and now he ſays, He does not know.

Court. He does not ſay, They fell ſhort.

Then he withdrew.

Lieutenant *Hamilton Gore*, of the *Eſſex*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 49.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Lower-deck.

Q. Did you ſee the *Rupert*, when ſhe firſt hauled up?

A. Yes.

Q. Was ſhe then in a Line with the Admiral?

A. No; ſhe was to Windward.

Q. Did you obſerve her engaged?

A. Yes; I ſaw her fire.

Q. At what time?

A. A little after the Admiral did.

Q. At what Ship did ſhe fire?

A. I took it to be the *Hercules*, the Ship aſtern of the *Spaniſh* Admiral.

Q. What Diſtance do you think ſhe might then be from her?

A. A Mile and an Half, or better.

Q. Did you ſee the *Marlborough*, when her Maſts went away?

A. Yes.

Q. Did the *Rupert* give any Aſſiſtance to her?

A. No.

Q. When the Fireſhip bore away, Did you ſee the *Rupert* give her any Aſſiſtance?

A. No;—not any.

Q. You ſay ſhe was never within point-blank Shot?

A. No; not till after we wore, towards the Evening.

Q. You ſay you never ſaw the *Rupert* in the Line?

A. No; not with the Admiral.

Q. How do you know, the *Rupert* was not in a Line with the Admiral?

A. Becauſe I ſaw both the Admiral and *Rupert*.

Q. Was you in the Line?

A. No.

Q. How far diſtant was the *Eſſex* from the Admiral?

A. About a Mile and an Half.

Q. How far to Windward of the Line?

A. About a Mile.

Q. How far was the *Rupert* to Leeward of you?

A. Better than a Quarter of a Mile:—A good Quarter of a Mile.

Q. Was the *Rupert* a Quarter of a Mile to Leeward of you, or to Leeward, and aſtern withal?

A. She was a good Quarter of a Mile to Leeward.

Q. Pray could the *Rupert* have engaged the *Hercules*, if ſhe had bore down?

A. To be ſure; if ſhe had thought proper.

Q. Was there any Ship between the *Rupert* and *Marlborough* to take up the *Hercules*?

A. Yes; the *Dorſetſhire*; but ſhe was to Windward, and did not engage within Point-blank.

Q. Muſt not the *Rupert*, if ſhe had bore down, and engaged the *Hercules*, have ſhot ahead between the Enemy, and the *Eſſex* and *Dorſetſhire*?

A. Yes; ſhe muſt undoubtedly.

Q. If the *Rupert* had, at the Firſt of the Action, bore down equally with the Admiral, and brought up in the Line, was there any Ship properly for her to have engaged?

A. She might have engaged, if ſhe had gone to the *Marlborough*'s Aſſiſtance.

Q. But if ſhe had brought up properly in a Line with the Admiral; I aſk you, Whether there was any Ship for the *Rupert* to have engaged?

A. No:—If ſhe had gone to the Northward, ſhe might have engaged the headmoſt of the *Spaniſh* Ships coming up.

Q. If ſhe had brought up in the Line at firſt, Could ſhe have brought any of her Guns upon the *Hercules*?

A. Yes; I think ſhe fired at the *Hercules*.

Q. But had the *Rupert* gone down, and brought up in a Line, leaving Room for the *Dorſetſhire* and *Eſſex*; Could ſhe have engaged the *Hercules*?

A. Yes; I believe ſhe could.

Q. Had the *Rupert* bore down in a proper Line with the Admiral, and brought up in a Line with him, and kept there, How long would it have been, before the headmoſt of the Five *Spaniſh* Ships aſtern could have been up within Gun-ſhot of her, with the Sail they crouded?

A. I think about Half or Three-quarters of an Hour.

Q. When thoſe Ships did come up, Was the *Rupert* in a proper Station to receive them?

A. No:—She fired; and her Shot fell ſhort.

Q. Did you ſee them fall ſhort?

A. Yes; I ſaw both her's and the Enemy's fall ſhort; tho' the Enemy's Shot went farther than the *Rupert*'s.

Q. When you firſt brought up, What Diſtance was you from the *Dorſetſhire*?

A. About a Quarter of a Mile; but I can't be poſitive.

Q. How had you the *Dorſetſhire* then?

A. Upon the Lee-Bow.

Q. Do you remember, how the *Rupert* then bore?

A. I can't remember, how ſhe was at that time: But, after we had hauled our Wind, I ſaw her to Leeward of us; and I believe, ſhe might be in a Line with the *Dorſetſhire*.

Q. Did you, during any Part of the Engagement, before the Admiral wore, obſerve any

any of thoſe Five *Spaniſh* Ships to be ſhot ahead of the *Rupert*?

A. No; I can't ſay I did.

Q. Did you obſerve the *Rupert* to haul off to Windward?

A. No.

Q. Did you obſerve the *Spaniſh* Ships to ſhorten Sail, or alter their Courſe from any Fire they received from our Ships?

A. No:—None of thoſe aſtern did.

Q. Was you in a Line with the *Namur*, when ſhe hauled off, towards the latter Part of the Engagement?

A. No:—We never were in a Line with the *Namur*.

Q. If the *Rupert* had bore down, and continued in the Line with the Admiral, Would ſhe have then been in a Station to have received the *Spaniſh* Ships coming up within Point-blank?

A. Yes; ſhe would, to be ſure.

Q. With whom would ſhe have been in Point-blank?

A. With the Enemy, with the headmoſt of thoſe Ships aſtern.

Q. If the *Rupert* had bore down directly with the Admiral, and brought up in a Line with him, Where would the headmoſt of the *Spaniſh* Ships coming up then have been?

A. She would have been within Point-blank, upon the *Rupert*'s Bringing up.

Q. Had ſhe gone down in a direct Line with the Admiral into her Station, and brought up in a Line with him, In what time would the headmoſt Ship have been up with her?

A. In Three-quarters of an Hour.

Q. As ſhe did not go down with the Admiral into her Station; If ſhe had gone down with him, How far do you think thoſe Ships would have been from her, when ſhe got into her Station?

A. She would have been within point-blank Shot of them.

Q. If ſhe had laid in her Station, till they came up, Would ſhe have been within point-blank Shot of them?

A. Yes.

Q. Do you underſtand the Queſtion?

A. I take the Queſtion very right.

Q. Pleaſe to explain, What Anſwer you make to thoſe Queſtions?

A. I ſay, If ſhe had gone down with the Admiral, ſhe would have been Three-quarters of an Hour before ſhe had a Ship to engage; and that, if ſhe had brought up in a Line with the Admiral, ſhe might have been within Point-blank of the Enemy.

Q. If the *Rupert* had bore down in her proper Station, in a Line with the Admiral; I think you ſay, In Three-quarters of an Hour, the *Spaniſh* Ships might have been up to engage her; and that they crouded Sail: Did you ever ſee thoſe *Spaniſh* Ships paſs the *Rupert*?

A. No.

Q. Did the *Rupert* bring up immediately, when the Admiral brought up?

A. She did not run ſo far as the Admiral: She brought up when we all did:—She brought up before the Admiral.

Q. Are you ſure, that the *Rupert* did not continue Bearing down, after the Admiral had brought up?

A. I can't be poſitive; I think ſhe brought up when the Admiral did: She was to Windward of the Admiral.

Q. I am not ſpeaking of the Line:—Did the *Rupert* bring up, when the Admiral did?

A. Yes; I think ſhe brought up then: I looked a little afterwards, and I ſaw her in a Line with the *Dorſetſhire*.

Q. Did you take notice of the *Rupert*, and the Enemy's Ships a Minute or Two, or a ſhort time, before the Admiral wore in the Evening?

A. Yes.

Q. How many of the Enemy's Ships had paſſed before the Beam of the *Rupert*?

A. There were Five Sail aſtern of the *Hercules*.

Q. How many of them had paſſed before the *Rupert*'s Beam?

A. I think, they had all paſſed her in the Evening.

Q. I will put the Queſtion again:—Juſt before Admiral *Mathews* wore, Can you tell, whether any of the Enemy's Ships had paſſed before the Beam of the *Rupert*?

A. Yes: They ſhot up nearer their Admiral.

Q. How many of them?

A. All the Five Sail.

Q. Were they all nearer the Fireſhip, than the *Rupert* was?

A. Yes; I think they all were.

Q. When the Admiral wore, Was the headmoſt of thoſe *Spaniſh* Ships upon the *Rupert*'s Quarter, Beam, or Bow?

A. I believe the headmoſt Ship was upon the *Rupert*'s Quarter.

Court. He is doubtful of every Queſtion you aſk him.

Witneſs. I am ſure thoſe Five Ships ſhot up to the *Rupert*.

Q. Were they ahead, or abreaſt, or aſtern of the *Rupert*?

A. I am not certain; but I believe, abreaſt of her.

Aſked by the Priſoner,

Q. I deſire he would explain himſelf, as to what has been aſked him: If the *Rupert* had bore down in a Line with the Admiral, and brought to in a Line with him; I would aſk you, How long muſt I have lain there, before thoſe Five Ships could have come up to me? Whether I could have gone immediately into Action, or muſt have lain by Three-quarters

of an Hour, before there would have been a Ship for me to have engaged?

A. You could not have come up to them under Three-quarters of an Hour.

Q. How long do you think I ſhould have been going down, if I had kept my Helm aweather, or my Ship before the Wind, ſuppoſing I had Three Topſails ſet?

A. Yes; you had.

Q. Then, if I had bore down in a Line with the Admiral, and brought to in a Line with him, How long muſt I have been, before there had been a Ship for me to engage?

A. If after you had brought up, you had filled, and bore down again, you would have been Three-quarters of an Hour, before you had engaged the headmoſt Ship of the Enemy within Point-blank.

Q. That is not my Queſtion:—If I had kept before the Wind, and had not brought to, when I did, How long muſt I have continued Sail, to have got into a Line with the Admiral?

A. I believe, about Half an Hour.

Court aſked,

Q. And, when he got there, Would there have been any Ship for him to engage?

A. Yes; he muſt have been within Point-blank of the headmoſt of the Enemy's Ships coming up.

Priſoner aſked,

Q. If I had not brought to when I did, How long do you ſay, it would have been, before I had got into the Line?

A. About Half an Hour.

Q. I think you ſay the Enemy's Shot ſtruck you?

A. No; not that I ſaw; I did not ſee any of the Enemies Shot ſtrike us.

Q. If I had continued Bearing down, that Half-hour, that you ſpeak of, and I had then got into a Line with the Admiral, ſhould I have been within Point-blank of the headmoſt of the *Spaniſh* Ships, or muſt I have then waited any time for them?

A. You would then have been within Point-blank, without waiting any time for them.

Q. You ſay I fired at the *Hercules?*

A. Yes: You did, and I took notice of the Shot.--The other Ships were a great Way from their Admiral.

Court aſked,

Q. Did any of the Five Sail paſs the *Rupert*, or did they not?

A. I think, they ſhot up, when the Fireſhip bore down.

Q. Did they paſs the *Rupert*, before they wore?

A. No: They did not.

Priſoner aſked,

Q. How far was the *Hercules* from the headmoſt of the Five *Spaniſh* Ships coming up, when Mr. *Mathews* firſt began to engage— becauſe, he ſays, I ſhould have a Ship to engage with?

A. I can't ſay, certainly.

Q. You ſay, I ſhould have been Three-quarters of an Hour, before I could have had one to engage with?

A. Yes.

Q. Were there Four, or Five, *Spaniſh* Ships coming up?

A. Five.

Q. Did you ſee a ſingle *Spaniſh* Ship by itſelf, or did you ſee any body engage a ſingle *Spaniſh* Ship?

A. I can't ſay, that I did— I did not mind any ſingle Ship.

Q. You ſay, I think, that when I brought to, I brought to, to Leward of you?

A. Yes.

Q. And I was in a Line with the *Dorſetſhire*, you ſay?

A. It was as much as you was.

Q. How far was you from the *Rupert*, when we firſt brought to?

A. Not a great Way then; but we filled our Sails, and hauled our Wind.

Q. What was I doing then?

A. I ſaw you always Firing, when I ſaw you in the Evening.

Q. What was I doing at firſt?

A. When I ſaw you, I always ſaw you fire; but your Shot fell ſhort, and ſo did the Enemy's too.

Q. At what time did you ſee my Shot, and the Enemy's, fall ſhort? Becauſe I want to aſk you a Queſtion.

A. Very often: I looked very often, and ſaw your Shot fall ſhort.

Q. Was I firing all the Day?

A. I always ſaw you firing, from the time you began, whenever I ſaw you.

Q. Then, if I was firing all Day long, I will aſk you no more Queſtions.

A. I am glad of it.

Then he withdrew.

Joſeph Myers, Maſter of the *Eſſex*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 52.): And he declared the ſame to be true.

Q. You ſay the *Rupert* hauled up before ſhe came into the Line.

A. Yes.

Q. Did you ever ſee her engaged within point-blank Shot?

A. No, never, till ſhe wore in the Evening.

Q. Did you ſee the *Marlborough*, when ſhe loſt her Maſts?

A. Yes.

Q. Did the *Rupert* give her any Aſſiſtance.

A. No.

Q. Did you ſee the Fireſhip go down?

A. Yes.

Q. Did the *Rupert* give her any Aſſiſtance?

A. No.

Q. What did the *Rupert* do?

A. She began to fire when we did.

Q. When did ſhe begin to fire?

A. Soon after the Admiral began.

Q. What Ship did you fire at?

A. We fired at the *Hercules*; but all our Shot fell ſhort, and ſo we left off Firing.

Q. At what Ship did the *Rupert* fire?

A. I can't ſay whether at the *Hercules*, or the Ship aſtern of her.—We fired at the *Hercules*; and, I believe, ſhe fired at the Ship aſtern of the *Hercules*.

Q. What did the *Rupert* do after that?

A. We left off, but ſhe continued Firing a long time.—She continued Firing ſmartly at that Diſtance; but all her Shot fell ſhort.

Q. If ſhe had gone down firſt to the *Hercules*, Was there Room for her to engage?

A. If ſhe had gone down to the *Hercules*, ſhe muſt have gone down ahead of us: We might all have gone down; for there was nothing to hinder us.

Q. If ſhe had hauled up in her proper Station aſtern of the Admiral, Could ſhe have engaged the *Hercules* to have done Execution?

A. Yes; but ſhe muſt have gone within us.

Q. If ſhe had gone down in her proper Station, in a Line with the Admiral, leaving a proper Space for the *Dorſetſhire* and *Eſſex*, Would ſhe not have been within Gun-ſhot of the *Hercules*?

A. No;—I believe the *Hercules* would have been too far ahead of her: But I think ſhe might have brought her Guns to bear upon the headmoſt of the Five *Spaniſh* Ships, and engaged her, I think, within Gun-ſhot.

Q. If ſhe had been in her proper Station in the Line, Could ſhe have fired at the headmoſt of thoſe Five Ships?

A. Yes: She might have been within Gun-ſhot of the headmoſt of thoſe Five Ships.

Q. If ſhe had been in her proper Station in a Line with the Admiral, Would the headmoſt of the Five Sail in that Caſe have been near enough at the *Rupert*'s firſt Bringing up, for her to have engaged within Point-blank?

A. Yes: I believe ſhe would have been within point-blank Shot.

Q. And not have been to Leeward of the Admiral then?

A. No.

Q. Do you remember, when the Admiral wore in the Evening, in what Poſition was the headmoſt or ſternmoſt of the Five *Spaniſh* Ships, with reſpect to the *Rupert*?—Did any of them ſhoot before the Beam of the *Rupert*?

A. No: When the Admiral wore, we were Firing at them.

Q. Did you fire aſtern, or how did you fire?

A. We were Wearing, when we fired at them.

Q. But do you remember, at the time the Admiral wore, the Poſition of the headmoſt or ſternmoſt of thoſe Ships?—Were they then upon the *Rupert*'s Bow, Beam, or Quarter?

A. I believe the headmoſt was upon the *Rupert*'s Beam, but not the ſternmoſt by a great deal.

Q. And they were not ſhot before the *Rupert*'s Beam?

A. No: They were not ſhot before her Beam; becauſe, when we wore, we fired our Larboard-Guns at them.

Q. What Guns did you fire?

A. We fired our Starboard-Guns firſt; and, after we wore, we fired our Larboard.

Q. As you was then ſo near the *Rupert*, How far do you reckon you was from the neareſt of the *Spaniſh* Ships?

A. About a Mile, before we wore.

Q. Did you obſerve any of thoſe Five *Spaniſh* Ships alter their Courſe, or Edge away, from any Fire of our Ships?

A. No: They kept their Courſe down to their Admiral.

Q. Did you ever obſerve the *Rupert* to be nearer to the Enemy, during any Part of the Day, than ſhe was at the time juſt before you wore?

A. No: That was the neareſt time the whole Day, and that was near a Mile.

Q. Did you fire any Shot from the *Eſſex* at thoſe *Spaniſh* Ships at that time, when you was about a Mile diſtant?

A. Yes: We then fired at them, and our Shot fell ſhort: We were then about a Mile from them.

Q. Was the *Rupert* ever in a Line with the *Namur*, after ſhe had hauled off?

A. I can't ſay.

Q. Was you in the *Eſſex* ever ſo far to Leeward, or ſo near the Enemy, as the *Namur* was, before you wore?

A. No.

Q. How far was you from the Enemy, before you wore, when you was the neareſt?

A. About a Mile, or a Mile and a Quarter.

Q. How far was the *Rupert* then to Leeward of you?

A. Between a Quarter and Half a Mile.

Q. Was that the neareſt you ever obſerved the *Rupert* to be to the Enemy before you wore?

A. Yes.

Q. Did you ever ſee the headmoſt of thoſe Five *Spaniſh* Ships fire at the Fireſhip?

A. Yes.

Q. Did their Shot reach her?

A. Yes: I ſaw the Shot fly about the Head and Stern of her.

Priſoner aſked,

Q. Were thoſe Five Ships to Leeward of their Admiral?

A. I can't be a Judge of that at ſo great a Diſtance.

Priſoner. I have no more Queſtions to aſk this Witneſs; but deſire he may be ordered to be in the Way, when I come to make my Defence; for he has contradicted himſelf in ſome Things he has ſaid.

The Court ſeemed to think, That it was not a uſual Thing to call in a Witneſs more than once; and aſked the Judge-Advocate, If he knew of an Inſtance of a Witneſs being called in twice: The Judge-Advocate replied, That it ſeemed to be intirely in the Power of the Court to call in a Witneſs, as often as they judged proper, to be examined upon any Point they might be in Doubt about: And the Deputy Judge-Advocate ſaid, That was not an unuſual Thing; for that he had known many Inſtances of it.

The Court, after a little Debate, agreed, That, if the Priſoner ſhould think it neceſſary, the Witneſs might be called in again; and he was told to attend, till the Tryal was over.

Then the Witneſs withdrew.

Lieutenant *Edmund Turner*, of the *Royal Oak*, was called in, and ſworn.

His Depoſition read (as in Captain *Williams*'s Tryal, Page 17.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Gun-deck.

Q. Where was the *Rupert*, when you began to engage?

A. Upon our Weather-Bow.

Q. At what Diſtance?

A. I don't know; but, towards the latter Part of the Afternoon, about Half a Mile; and ſhe was to Windward of us all the time, and the *Eſſex* to Windward of her.

Q. From whence did you ſee the *Rupert* and *Eſſex*?

A. Out of the Weather-Ports—I was then abaft the Main-maſt; and the People cried, Look, look at the *Eſſex* and *Rupert!* Upon which I looked out of the Weather-Ports, and ſaw them to Windward.

Q. Did you ſee the *Rupert* engage?

A. I did not ſee her engage.

Q. How often did you look out?

A. A great many times.

Q. How many times?

A. Three or Four times; and I always ſaw her to Windward.

Q. Within what Space of Time did you look out theſe Three or Four times?

A. Within about the Space of an Hour.

Q. Did you ſee when the *Marlborough*'s Maſts went away?

A. No.

Q. Did you ever ſee her afterwards?

A. Yes.

Q. Did you obſerve the *Rupert* bear down to her Aſſiſtance?

A. No.

Q. Did you ſee the Fireſhip when ſhe went down?

A. No.

Q. Did you ever obſerve the *Rupert* engage?

A. No; I never ſaw her fire.

Q. Did you engage any Ship?

A. Yes; we engaged a *Spaniſh* Ship.

Q. What did the *Rupert* do? Did you obſerve her to fire?

A. I can't ſay; ſhe might fire for aught I know; but I did not obſerve her.

One of the Members here ſaying, This Witneſs ſays nothing; the Preſident replied, What do you mean by ſaying ſo? He ſays he ſaw the *Rupert* to Windward of the *Royal Oak*: And the Court called for his Examination to be read: And it was read accordingly.

Q. Did you ever ſee the *Rupert* in a Line with the Admiral?

A. I can't ſay; for I was quartered below, and did not obſerve.

Q. In the latter Part of your Engaging, What Ship did you fire at?

A. I believe, at the headmoſt of the Four *Spaniſh* Ships.

Q. How many of thoſe Ships paſſed by you?

A. I believe, all but the laſt.

Q. Juſt before you wore, Did you look out to ſee whereabouts the *Rupert* was?

A. No; I did not.

Q. Did you ſee the *Spaniſh* Ships then?

A. Yes; I ſaw them; they were ſhot a little Way ahead.

Q. Did they alter their Courſe?

A. No; I did not obſerve, that they did.

Q. What Sail had they?

A. They had their Foreſails, Topſails, and Top-gallant Sails; and, at the Beginning, ſome of them had their Top-gallant Sails lowered, and ſome not.

Q. You ſay it was the headmoſt of the Four Ships that you engaged.

A. Yes; but we received the Fire from all of them.

Q. Was ſhe before or abaft your Beam, when you engaged her?

A. She was abaft the Beam at firſt.

Q. Do you think the *Spaniſh* Ships paſſed the *Rupert*?

A. I can't tell whether they did or not.

Q. Did you go upon Deck, juſt before you wore Ship?

A. No.

Q. Did you go up at the time of Wearing?

A. No: I never was upon Deck but once; which was at the time I heard Captain *Williams* uneaſy at the Ships not coming down to his Aſſiſtance. — I but juſt looked out, and went down to my Quarters again.

Q. Did you, during the Action, from the Time the Admiral firſt began to engage, to the Time he wore in the Evening, ever ſee the *Rupert* properly engaged to do Execution?

A. I never ſaw her engage at all.—She might fire; but I did not ſee her.

Q. Did you ever ſee her at a proper Diſtance to do Execution?

A. I

A. I can't ſay; ſhe might do Execution, for what I know; but ſhe was always to Windward of the *Royal Oak*.

Q. Was you then at a proper Diſtance from the Enemy?

A. I can't ſay.

Q. Did you ſee the Fireſhip come down?

A. No.

Q. Do you know any thing of the *Royal Oak*'s hailing the *Rupert*?

A. No; only as I heard People ſay afterwards.

Q. Did you hear the *Royal Oak* hail the *Rupert*?

A. No: But I was informed afterwards ſhe did.

Court. Captain *Ambroſe*, Will you aſk him any Queſtions?

Priſoner. No: It does not ſignify any thing.

Then he withdrew.

Lieutenant *Robert Wilſon*, of the *Royal Oak*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 56.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. You ſay the *Rupert* brought up to Windward of the *Marlborough* and *Namur*.

A. Yes.

Q. Did you ſee her engaged at any time?

A. Yes.

Q. With what Ship?

A. The Ship aſtern of the *Hercules*.—I believe ſhe had no Ship to engage at firſt.

Q. Was ſhe within Point-blank at that time?

A. No.

Q. Was ſhe in a Line?

A. Not with the *Marlborough*.

Q. Did you ſee the *Marlborough*, when her Maſts went away?

A. Yes.

Q. Where was the *Rupert* then?

A. A little to Windward of us.

Q. Did ſhe not bear down, to aſſiſt the *Marlborough*?

A. No.

Q. Did you ſee the Fireſhip go down?

A. No; I ſaw her juſt as ſhe blew up.

Q. Did the *Rupert* give her any Aſſiſtance?

A. No.

Q. Did you ever ſee the *Rupert* properly engaged, during the whole Time of the Action?

A. I can't ſay.

Q. Was the *Royal Oak* engaged?

A. Yes.

Q. What Words did Captain *Williams* make uſe of, when he hailed the *Rupert*?

A. He aſked Captain *Ambroſe*, Why he would not bear down; but whether Captain *Ambroſe* made any Anſwer, or not, I can't tell.—I did not hear any Anſwer.

Q. Was it the Captain himſelf that hailed Captain *Ambroſe*?

A. Yes; I heard Captain *Williams* himſelf hail.

Q. Were the Words, If he would bear down; or, Why he would not bear down?

A. The Words were, Why he would not bear down?—I think they were the Words.

A. At the time the *Royal Oak* engaged, did you ſee the *Rupert* engage ſo as to do proper Execution?

A. No; I think ſhe was not nigh enough.

Q. Did you ſee the *Rupert* engaged in any Part of the Day?

A. No.

Q. As you did not hear any Anſwer from Captain *Ambroſe*, Did not the *Rupert* bear away, when the *Royal Oak* did, to engage the Enemy?

A. I can't tell.

Q. I think you ſay, She never was in a Line with the Admiral.

A. I don't ſay, ſhe never was in the Line; I believe ſhe might be in the Line about Four o'Clock: She was not in the Line, when the Admiral began to engage.

Q. In the Evening, juſt before the Admiral hauled down the Signal for Battle, and wore, Were any of thoſe Four *Spaniſh* Ships got paſt the *Rupert*?

A. No; I believe not—I don't remember any of them paſſed the *Rupert*.

Q. Had the *Rupert* it in her Power to have gone down, and engaged thoſe Ships cloſer?

A. Yes; and to have gone on board them too; but then ſhe muſt have gone to Leeward of the Line—She might have gone as cloſe as ſhe pleaſed; for ſhe was to Windward.

Q. Could ſhe have gone within a proper Diſtance of them, without going to Leeward of the Line?

A. Yes; I believe ſhe might.

Q. What! without going to Leeward of the Line?

A. That is, without going to Leeward of the *Marlborough*.

Q. What time of the Day did you firſt bring up to engage?

A. About Two o'Clock.

Q. Did you obſerve whereabouts the *Rupert* was then?

A. She was cloſe to us; ſo cloſe, I could fling a Stone on board her.—When we engaged, the *Rupert* was upon our Weather-Bow.

Q. How long did you engage, the Firſt time?

A. About Three-quarters of an Hour.

Q. Did the *Rupert* engage, at the ſame time?

A. No; I did not obſerve that ſhe did.

Q. Whereabouts was the Enemy then from you?

A. To

A. To Leeward.—The Ship we engaged was abreaſt of us; and ſhe fired at us firſt.

Q. It was much, that the *Rupert* was ſo near you, and did not engage.

A. She had never a Ship to engage, at that time.

Q. When you left off Engaging the firſt time, How far might the *Rupert* be from you then?

A. A very little Way.

Q. Was it the ſame Diſtance as when you firſt began to engage?

A. I can't ſay it was the ſame Diſtance.

Q. Was it after you left off Firing then, that you ſpoke to the *Rupert?*

A. No; it might be an Hour afterwards.

Q. Did you make any Sail to ſpeak to the *Rupert?*

A. No; we made no Sail at all.

Q. I thought you had hauled up to the *Rupert?*

A. We did afterwards—This was at the firſt Beginning of the Engagement.

Q. Did you not hail the *Rupert* then?

A. Yes; about Three o'Clock.

Q. Was that after engaging the Firſt Ship?

A. Yes.

Q. Did you not haul up to the *Rupert*, when you engaged the Firſt Ship?

A. No; ſhe was cloſe to us, when we engaged the Firſt Ship.—It was after we had engaged the Four Ships.

Q. As the Enemy ſhot ahead, did not the *Rupert* engage her?

A. I can't tell.

Q. Was you near enough to do proper Execution, when you engaged that ſingle Ship?

A. No; I think not: She was a Mile from us.

Q. Was the *Rupert* ever to Leeward of you?

A. No; never; only when ſhe wore after the Admiral.

Q. Was ſhe ever right ahead of you?

A. No; rather upon our Weather-Bow, if any thing.

Q. When you began to engage the Four Ships of the Enemy, did you haul up, to ſpeak to the *Rupert*, and then engage thoſe Four Ships again?

A. No.

Q. Was it before, or after you engaged the Four *Spaniſh* Ships, that you hailed the *Rupert?*

A. I can't be poſitive.—I am ſure ſhe was hailed; but I can't be certain, whether it was after engaging the Firſt Ship, or after engageing the Four Ships.

Q. Did you obſerve any of thoſe Four Ships ever to ſhorten Sail, or alter their Courſe dureing the Engagement?

A. No; I did not obſerve they did.

Q. You ſay, You was near the *Rupert:* Did you hear any thing paſs between Captain *Williams* and Captain *Ambroſe*, in relation to the Diſtance they were from the Enemy, while their Two Ships lay ſo cloſe to each other, as you ſay they were?

A. No; I never did hear any thing of it.

Then he withdrew.

Lieutenant *James Paterſon*, late Maſter's Mate of the *Royal Oak*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 57.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Forecaſtle.

Q. Acquaint the Court, what you know of the Behaviour of the *Rupert*, during that Day's Engagement?

A. When the Admiral bore down, we all edged round, but not ſo quick, or ſhort round, as the Admiral did; and, when we brought to, the *Rupert* went to Windward of us, and brought to, before we did.

Q. Did you engage a ſingle Ship, at firſt?

A. Yes.

Q. What time did you engage that ſingle Ship?

A. I can't ſay directly; but, I believe, about Half an Hour after the Admiral began.

Q. Where was the *Rupert* then?

A. Upon our Larboard-Bow.

Q. At what Diſtance?

A. About a Cable's Length, when we engaged the Firſt Ship.

Q. Did the *Rupert* then engage?

A. Some time after we began to engage, I ſaw the *Rupert* fire; but I don't know at what Ship.

Q. Where was the *Rupert*, when you had done engaging that ſingle Ship?

A. Upon our Larboard-Bow:—We hauled up cloſe then under her Starboard-Quarter, and lay there about Half an Hour.

Q. Did you then hail the *Rupert?*

A. I can't ſay poſitively whether it was then, or whether it was after engaging the Four Ships, after we bore down the Second time.

Q. What did the *Rupert* do, after that Half-hour?—Did the *Rupert* bear down with you the Second time?

A. Not as I remember.—I believe not.

Q. Had you hailed the *Rupert* then?

A. I ſaid, I was not poſitive, whether it was before we bore down, or after we hauled up, that we hailed the *Rupert*.

Q. Do you remember hailing the *Rupert*, and what was ſaid?

A. Captain *Williams* hailed the *Rupert*; and Captain *Ambroſe* came into the Stern-Gallery, with a Trumpet in his Hand; and ſaid, What do you ſay Captain *Williams?*—Captain *Williams* made Anſwer, Why don't you edge down nearer, Captain *Ambroſe?* or Words to that

Effect.—Captain *Ambroſe* then turned round, and went into his Cabin; and I heard no more.

Q. Did the *Rupert* bear down after you hailed her, though you heard no Anſwer?

A. I did not ſee her bear down afterwards.

Q. Did you yourſelf diſtinctly hear Captain *Ambroſe* ſay, What do you ſay, Captain *Williams?*

A. Yes, I heard him diſtinctly ſay thoſe Words: And Captain *Williams* replied, Why don't you edge down nearer, Captain *Ambroſe?*

Q. When you was engaged with the Four Ships, Was Captain *Ambroſe* at that time within a proper Diſtance of the Enemy to engage within Point-blank, or at any other Part of the Engagement?

A. No.

Q. After hailing the *Rupert*, Did the *Royal Oak* bear down ſingly to the Enemy?

A. I can't tell:—I remember we bore down ſingly; but I can't ſay, whether it was before or after the Hailing.

Q. Do you recollect, that your Ship was hailed at any time by Captain *Ambroſe?*

A. Not that I ever heard.

Q. Muſt you not have heard it, if he had hailed you?

A. Yes, I think I muſt have heard it, becauſe I was quartered upon the Forecaſtle, and ſtood moſt of the time upon the Davit.

Q. Did you ſee the *Rupert* fire?

A. Yes.

Q. When you obſerved the *Rupert* engaged, Was ſhe in a Line with the *Namur* or *Marlborough*, or within a proper Diſtance to do Execution?

A. No, I think not.

Q. Which of the Four Enemy's Ships did you engage?

A. The headmoſt firſt; and afterwards Two of the others.

Q. How far had the headmoſt ſhot ahead of you, before the Admiral made a Signal to wear?

A. I think, upon the Beam, or ſomething before the Beam; but I can't ſay, whether ſhe was before it or not; if ſhe was before our Beam, it is as much as ſhe was.

Q. What Sail did they come up with?

A. Top-gallant Sails, Topſails, and Foreſails:—Some had their Top-gallant Sails down.

Q. Did you obſerve them to ſhorten their Sail, or alter their Courſe, for your Firing?

A. No; they ſeemed to edge away more than we did; but not occaſioned by our Fire, becauſe we were but one Ship.

Q. Did the *Rupert* engage at that time?

A. I ſaw her fire ſeveral times; but I can't ſay at what Ships.

Q. How did ſhe then bear from you, and at what Diſtance?

A. About a Point and an Half, or Two Points, upon our Weather-Bow; and about a Cable's Length diſtant.

Q. Was the *Rupert* ever within point-blank Shot of the Enemy, during the Engagement?

A. No; not till after Wearing in the Evening.

Q. Did you ſee the Fireſhip coming down?

A. Yes.

Q. When ſhe blew up, Which was neareſt to her, the *Rupert*, or the headmoſt of the Enemy's Ships?

A. The Enemy's Ship was the neareſt.

Q. Do you obſerve the Queſtion? It is, Whether the headmoſt of thoſe Four *Spaniſh* Ships coming up, or the *Rupert*, was the neareſt?

A. I believe the *Rupert* was the neareſt.

Q. Did the *Rupert* then give no Aſſiſtance to the Fireſhip?

A. No.

Q. How did the Fireſhip then bear, with reſpect to the *Royal Oak?*

A. Upon her Starboard-Bow.

Q. How did the headmoſt of the *Spaniſh* Ships then bear, with reſpect to your Ship?

A. The headmoſt of the Four *Spaniſh* Ships was abaft our Beam.

Q. Did you ſee the *Marlborough*, when ſhe loſt her Maſts?

A. I did not ſee her then; I ſaw her juſt after.

Q. Did the *Rupert* give her any Aſſiſtance?

A. No; none at all.

Asked by the Priſoner,

Q. When you engaged the Four *Spaniſh* Ships, Where were they from you?

A. The Two headmoſt, about upon our Beam; and the Two ſternmoſt upon our Quarter.

Q. How had you the Wind then?

A. I believe, upon the Beam.

Q. How did thoſe Ships come up? Did they come up with a large Wind, or how?

A. I believe about Two or Three Points from the Wind.

Q. How was it poſſible, that I could fire at thoſe Ships without firing upon you, till they had come up ahead of you?

A. No, you could not.

Q. Were thoſe Ships in a Line with their own Admiral?

A. I believe, not quite; for their Admiral ſeemed to be more to Windward than they.

Q. Did they not ſeem to intend to cloſe with their Admiral?

A. They ſeemed rather a little to Leeward of their Admiral, and were going towards him.—They came up in a very good Line; but ſeemed to keep away more than we did.

Q. Suppoſe Captain *Williams* and I had bore away farther to the Weſtward, before we brought up; I would ask you, Whether thoſe Ships would not have made their Line to the Admiral, and have ſhut us out:—Whether, if we had been but one Cable's Length farther to the Weſtward, would they not have gone up in a ſtrait

ſtrait Line to their Admiral, and have ſhut us out to Leeward of them?

A. I believe, if we had edged down, to have been in a Line with the *Namur* and *Marlborough*, they might have weathered us, if they had a mind ſo to do: Some of them might, if not all.

Q. Pray, where did the other Ship, that ſingle Ship you engaged, go to?

A. I don't know.

Q. 'Tis very ſtrange, if you engaged a Ship an Hour, that you don't know where ſhe went to: You muſt have ſunk her then: Pray recollect yourſelf; for you ſaid, ſhe paſſed me.—

A. I don't know, that ſhe paſſed you: I only remember, that there was a ſingle Ship, which we engaged diſtant from the Four; but what became of her, I don't know.

Q. Did I engage, as ſoon as I had any Ship to engage with?

A. I can't ſay;—I ſaw you fire; but I don't know at what Ship.

Q. Did you ever ſee me haul off from the Enemy, or endeavour to get nearer?

A. I don't remember, that I ſaw you endeavour to get nearer.

Q. After your Hauling off, Did I haul off?

A. I don't remember you hauled off, or got nearer:—You always ſeemed to me to be in the ſame Poſition, with regard to us.

Q. Was the Shot you received in your Main-maſt, in the After-Part, or on one Side?

A. In the After-Part, right in the Middle, between the Two Cheeks.

Q. Did not that Shot come from the Ship aſtern of you?

A. It came either from the ſternmoſt *Spaniſh* Ship, or from the Ship next to her.

Q. How was it then poſſible, that I could have got to have engaged thoſe Ships, till you got out of the Way, or till they got ahead?

A. I don't know but that Shot might be received as we hauled off; I can't tell, whether we received it before, or not.

Q. Upon your Hauling off, Did you get your Fore-tack on board, haul your Mizen out, and haul your Wind, till you got to Windward upon my Weather-Beam?

A. I don't remember our getting the Fore-tack on board, till we wore; or hauling out the Mizen: But I am poſitive, that we never were to Windward of the *Rupert*, during the whole Action.

Q. Did your never ſee me lay my Sails all aback, in order to drive down upon the Enemy's Ships, that were coming up in my Wake?

A. I ſaw you bring to at firſt.

Q. Did you never ſee me fire my Weather-Guns?

A. No: I don't remember, that you did.

Q. Did you never ſee me yaw my Ship, ſometimes putting the Helm aport, and ſometimes aſtarboard, in order to get the Ship aſtern, the Wind being come up large; ſo that I could not lay my Sails aback?

A. I did not obſerve your Doing ſo.

Q. How long did you fire, before I began?

A. I am not certain how long; but it was ſome time.

Q. As thoſe Ships were coming up under their Topſails, Top-gallant-ſails, and Foreſails, they muſt have ſoon paſſed you: Did I not engage them, as they opened your Ship?

A. I can't tell: The Headmoſt juſt came before our Beam:—I ſaw the *Rupert* firing; but I don't know at what Ship.

Q. Did you ſee any of her Shot fall ſhort?

A. Yes; and ſeveral of the Enemy's Shot fall ſhort of the *Rupert*.

Q. How far diſtant, do you think, I was from the Enemy, when you ſaw me fire?

A. About a Mile, or within a Mile.

Q. And then I was within a Cable's Length of you?

A. Yes.

Q. Were not the *Rupert* and *Royal Oak* in a Line with the Fireſhip, when ſhe blew up?

A. No.

Q. How far muſt they have been more to the Weſtward, to have been in a Line with her?

A. Above Half a Mile.

Q. Did any of thoſe Four ſternmoſt *Spaniſh* Ships paſs you, or the *Rupert*?

A. No; not till we wore.

Q. On which Side of the Deck did Captain *Williams* ſtand, when he hailed the *Rupert*?

A. On the Larboard-ſide of the Quarter-deck; for you was upon our Larboard-Bow.

Q. Are you poſitive, it was on the Larboard-ſide of the Quarter-deck?

A. It was, to the beſt of my Remembrance; for I was then upon the Davit, and went over to the Larboard-ſide of the Forecaſtle, in order to ſee you, as I could not ſo well ſee you from where I was.

Then he withdrew.

Captain *Philip Tom*, late Lieutenant of the *Norfolk*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 58.): And he declared the ſame to be true.

Q. Relate what you know of the *Rupert*'s Behaviour.

A. All I know of her is, That I obſerved the Three Ships aſtern of the *Marlborough* make an Angle to Windward of the Line; the *Dorſetſhire*, *Eſſex*, and *Rupert*: The *Dorſetſhire* was the Leewardmoſt; the *Eſſex* to Windward of her; the *Rupert* to Leeward of the *Eſſex*:—I did not ſee them till after Two o'Clock; when the *Norfolk* was out of Action:—And I alſo ſaw the *Royal Oak*, to Leeward of them, in Action: I ſaw the *Rupert* about Two o'Clock, and Half paſt Two; but I don't remember, that I ſaw any thing of her being in Action.

Q. Where was you quartered?

A. Upon the Middle-Gun-deck.

Q. When the *Royal Oak* was engaged, Where was the *Rupert*; and at what Diſtance from the *Royal Oak*?

A. I can't tell.

Q. Did you ſee the *Marlborough*, when her Maſts fell?

A. Yes; I ſaw the Maſts fall.

Q. Did you ſee the *Rupert* go down to her Aſſiſtance?

A. No: I did not ſee any Ship go down to her Aſſiſtance: They all made an Angle; and were in the Poſition I mentioned.

Q. Did you ſee thoſe Three Ships engaged?

A. I ſaw them ſometimes Firing, and ſometimes not Firing; but I can't tell, whether they were Firing then, or no: The moſt remarkable Ship, that I ſaw Firing from, was the *Royal Oak*, who was engaged with the Second Ship aſtern of the *Real*.

Q. Did you ſee the Fireſhip go down?

A. Yes.

Q. Did you ſee her blow up?

A. No; but I ſaw the Combuſtibles in the Air, and ſaw the Smoke.

Q. Did any of thoſe Ships bear down to cover her?

A. I did not ſee any bear down to cover the Fireſhip; but they all went down after her.

Q. How long after?

A. The Admiral was Wearing then; and they all bore down with him: I ſaw all the Four Ships bear down after the Admiral.

Q. When you ſaw the *Royal Oak* to Leeward of the other Ships, and engaging the Second Ship aſtern of the *Spaniſh* Admiral, Was the *Rupert* diſabled? Or, what was the Reaſon ſhe did not go down, and engage the next Ship to her?

A. I can't ſay, what might be the Reaſon.

Q. When the *Royal Oak* was engaging the Second Ship aſtern of the *Spaniſh* Admiral, How were the Four *Spaniſh* ſternmoſt Ships?

A. They were to Windward of all Admiral *Mathews*'s Diviſion, and a great Way aſtern.

Q. Are you ſure of that?—How do you know?

A. Yes: It is very plain they were to Windward: I can make it plain to any Seaman, that they muſt be to Windward; for I was to Leeward of the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*; and I ſaw the *Spaniſh* Ships to Windward of them: And therefore it is evident, they were to Windward of our Line.

Q. At what time was this?

A. At Two o'Clock, at Half paſt Two, and at Three o'Clock; they laſted ſo, till after Three o'Clock:—At Three, Admiral *Leſtock*'s Diviſion engaged them to Windward of our Line; and they bore away, when Mr. *Leſtock*'s Diviſion drew near to them.

Court. This is very ſtrange! By all Accounts we have yet had, we had the Weather-gage of the Enemy all that Day.

Q. Was Mr. *Leſtock*'s Diviſion to Windward of the Admiral?

A. Yes: I ſaw a Ship of Mr. *Leſtock*'s Diviſion come into our Rear; and I ſaw her open to Windward of us, upon our Weather-Quarter.

Q. At what time was this?

A. It was after Three;—after the *Marlborough*'s Maſts went away.

Aſked by the Priſoner,

Q. If I had been more to Leeward than I was, Would not thoſe Five Ships have laid up to Windward of me, and have joined their own Admiral?—If they had gone down to him in a Line, Would they not have laid in to Windward, between me and their own Admiral?

A. I am not a Judge; may be they might:—Upon Conſideration, I believe, they muſt have done ſo, by the Courſe they ſteered.

Q. Suppoſe I had been in a Line, Was there any Ship for me to have engaged?

A. There was no Ship for any of the Ships aſtern to have engaged, except the Two Ships aſtern of the *Real*, till the Four ſternmoſt *Spaniſh* Ships came up.

Q. If I had been down in the Line with Admiral *Mathews*, How long would it have been before the headmoſt of thoſe Ships could have come up with me?

A. I believe, they could not have come up your Length, till about Four, or Half paſt Four o'Clock.

Court aſked,

Q. Do you underſtand Captain *Ambroſe*, That if he had bore down at firſt, that thoſe Ships could not have come up for the *Rupert* to have engaged them, till paſt Four o'Clock, ſuppoſing every Ship had gone down in her Station? Do you mean ſo?

A. Yes, I mean ſo: It could not be before; becauſe the *Cambridge* ſhot in between the *Royal Oak* and the Enemy, and was in Action with them at Half paſt Three, or Four o'Clock.

One of the Members ſaid,

Our Proceedings are irregular, in interrupting Captain *Ambroſe*, while he is aſking his Queſtions.—After we have aſked what Queſtions we think proper, and have given Leave for him to aſk, he ought not to be interrupted, till he has done.

Court to the Witneſs,

Pray attend to Captain *Ambroſe*, and anſwer his Queſtions.

Priſoner aſked,

Q. How long would it be before the Headmoſt of thoſe Ships could have come up abreaſt of me, if I had been in a Line with the *Marlborough?*

A. I ſay, about Four, or Half paſt Four:—Before the *Cambridge* was in Action with the Headmoſt of them, it was between Three and Four: I think it was the Headmoſt; but it might be the Second.

Q. When the Fireſhip blew up, Was no Ship engaging thoſe Four *Spaniſh* Ships?

A. I

A. I can't ſay :— I don't recollect : Perhaps the *Cambridge* might.

Q. Was I in a Line with the Admiral, or to Leeward of him, when the Fireſhip blew up ?

A. I can't ſay : I don't know any thing of your being to Leeward of the Admiral.

Q. How far was you to Windward of the Admiral ?

A. We were never to Windward of the Admiral ?

Q. How far was you to Windward of the Line ?

A. I don't know, that ever we were to Windward of the Line at all.

Q. Did I not take your Station in the Line, upon the Starboard-tack ?

A. I know nothing of that : The Account I give is before the Wearing.

Q. If the Admiral bore away, and I broke my Line, and took your Place, I muſt have been to Leeward of the Admiral, or the Admiral could not have come down to me ?

A. I have anſwered you all the Queſtions I can :—I know nothing of what you did after the Wearing.

Q. Was I never to Leeward of the Admiral ?

A. I don't know : I ſaw nothing of you, after we got upon the other Tack.

The Witneſs deſiring Leave to go to *London*, upon particular Buſineſs, till this Tryal was over ; the Court gave him Leave.

Then he withdrew.

James Moore, Maſter of the *Norfolk*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 59.) : And he declared the ſame to be true.

Q. You ſay, The *Rupert* hauled up, before ſhe came in to a Line with the Admiral ?

A. Yes : She was not in a Line with the Admiral all the Afternoon, till after the Admiral wore, and we ſtood to the Northward.

Q. Was ſhe within Point-blank of the Enemy ?

A. I ſaw ſeveral Guns fired ; but I don't know, that they were within Point-blank.

Q. Did you ſee her fire ?

A. Yes ; I ſaw her fire.

Q. Was it within Point-blank ?

A. I can't ſay ; becauſe ſhe was ſo far off.

Q. What Ship did ſhe fire at ?

A. I can't ſay, whether it was at the *Hercules*, the Ship aſtern of the *Real*, or not : The others were Two Miles aſtern of her ; and we were Two Miles from the *Rupert :* But it was at ſome of the *Spaniards*.

Q. How far was the *Rupert* from the *Norfolk ?*

A. I believe the *Rupert* was Two Miles from the *Norfolk* at that time.

Q. Did ſhe never go down to aſſiſt the *Marlborough*, or cover the Fireſhip ?

A. No.

Q. Did you ever obſerve her to be in a Line with the Admiral ?

A. No ; never till after we wore, and ſtood to the Northward :—The *Dorſetſhire* was higheſt to being in the Line.

Q. Before you wore, Was there any Ship for the *Rupert* to have engaged with ?

A. No : The ſternmoſt Ships had not then come up ; but ſhe engaged the *Spaniſh* Ships, after we wore, and ſtood to the Northward : Then they all engaged.

Q. Did you never obſerve her to engage before that ?

A. I can't tell : There were other Ships to mind, as well as her : We were Two Hours engaged ourſelves ; and I could not conſtantly keep my Eye upon her.

Q. Did you obſerve, at any time of that Day's Action, the *Rupert* to be engaged ?

A. I ſaw Guns fired about Three o'Clock ; but at too great a Diſtance ; not within Point-blank.

A. Did you obſerve the Four or Five *Spaniſh* Ships coming up ?

A. Yes : I can't ſay, whether there were Four or Five Sail ; but, if all our Ships had bore away, as they ought, they would not have got up.

Q. Were they to Windward, or to Leeward, of our Centre ?

A. To Leeward conſiderably : We could have weathered them far enough : When we wore, the Admiral bore down to Leeward, for ſome time, upon them.

Q. When you ſaw the *Rupert* fire at the *Spaniſh* Ships, the latter Part of the Day, a little before the Admiral wore, Did you obſerve them to edge away ?

A. No ; I can't ſay, I did : I think they kept their Courſe up to the *Real*.

Q. When you bore down to wear with the Admiral, did you obſerve the Poſition of the *Rupert ?*

A. No, I can't ſay I did : They all wore, and ſtood after the Admiral.

Q. Which was the Ship immediately ahead of the Admiral, when you had wore upon the other Tack ?

A. The *Dorſetſhire* was ; the *Marlborough* was left behind.

Q. What time did they wear ?

A. They all wore, and ſtood to the Northward, ſome time after Four.

Q. Do you think the *Rupert* could have annoyed the Enemy, more effectually than ſhe did, without going to Leeward of the Line, and out of her Station ?

A. If thoſe Ships aſtern had bore down equally with the Admiral, they would have ſtopped the Four ſternmoſt *Spaniſh* Ships, or forced them to bear away.

Priſoner aſked,

Q. You ſay I was to Windward of the Line ?

 A. Yes ;

A. Yes; you never was in the Line.

Q. If I had been in my Station in the Line, and gone down with the Admiral, How long would it have been, before the Headmoſt of thoſe *Spaniſh* Ships could have been abreaſt of me?

A. The Headmoſt of them might have been abreaſt of the *Rupert* about Four o'Clock.

Q. Did you engage, when the Admiral did?

A. Yes.

Q. How long did you continue engaged?

A. An Hour and Three-quarters, as the Captain ſaid, by his Watch; for we had no Glaſſes running then.

Q. Were not the *Namur*, *Marlborough*, *Dorſetſhire*, and *Eſſex*, firing at the time you did?

A. I know nothing of the *Eſſex*: — When the Admiral fired the firſt Gun, the *Norfolk* began to engage; and, what was done by the Ships for an Hour and Three-quarters afterwards, I know nothing of, being engaged ourſelves: I ſaw a great Firing aſtern, but I can't tell what Ships fired; for we were engaged ourſelves, and had no time to look about us.

Q. How far diſtant might the *Rupert* be from you?

A. About Two Miles, or better.

Q. Then could you judge, during that Hour and Three-quarters, that the *Rupert* was not in a Line?

A. Yes; for you was to Windward, as I told you before; and therefore the Firing did not prevent my obſerving you: — You was a Mile to Windward of the Enemy, and we were within Piſtol-ſhot; ſo that I could eaſily ſee you.

Q. When the Admiral wore, Did not ſome Ships engage thoſe *Spaniſh* Ships that were coming up?

A. Yes; there was Firing then, as there was the whole Afternoon.

Q. Did not the Fireſhip go between the *Dorſetſhire* and you?

A. Yes, to be ſure, ſhe did; for the *Dorſetſhire* was to the Northward of her.

Q. Don't you think you was better ſituated to conduct the Fireſhip, than the *Rupert* was?

A. Yes, we could have gone to her Aſſiſtance, if the Captain had thought proper; but he was not willing to break the Line, without a Signal for it.

Q. You ſay, The *Rupert* could have gone down: Why could ſhe, any more than the *Norfolk*?

A. The *Rupert* was not in the Line.

Q. Did any of the Enemy's Four or Five Ships paſs the *Rupert*?

A. Yes, to be ſure, they did; becauſe we went to the Northward, and they to the Southward.

Q. But did any of them paſs, while we were on the Larboard-Tack, before we wore?

A. I can't ſay that.

Q. You ſay I was to Windward of the Line?

A. Yes; you was to Windward of the Line; unleſs it was a very crooked Line.

Q. When the Admiral wore, Did he not bear down to thoſe Five *Spaniſh* Ships?

A. Yes.

Q. And did not the *Rupert* get into your Place in the Line, where you ought to have been?

A. I don't know what you did after it was dark; for we were all in a confuſed manner then; I never ſaw any thing like it.

Q. When the Admiral wore, and ſtood down to thoſe *Spaniſh* Ships, did he not ſhoot within me? and then I wore after him, under his Stern, and took your Station, when you was a Gun-ſhot and an Half to Windward?

A. I don't know that you did; I never ſaw you aſtern of the Admiral, after we wore, and ſtood to the Northward.

Q. You ſay, You never ſaw me aſtern of the Admiral.

A. No.

Priſoner. Then I will aſk you no more Queſtions.

Then he withdrew.

Duncan Grant, Maſter of the *Somerſet*, called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 61.): And he declared the ſame to be true.

Q. Did you ſee the *Rupert*, when the Admiral firſt began to engage?

A. No.

Q. At what time did you ſee her?

A. Not till after Three o'Clock.

Q. Was ſhe to Windward of the Line then?

A. She was then to Windward of the *Marlborough*.

Q. Did you ſee her fire?

A. I can't ſay I did.

Q. Was ſhe to Windward of you?

A. Yes, ſhe was; I was looking over the Larboard-ſide; and I ſaw her about Two or Three Points upon our Weather-Quarter.

Q. What Diſtance was ſhe from you?

A. Three or Four Miles.

Q. Did you ſee the *Marlborough*'s Maſts go away?

A. No, I did not.

Q. Did you ſee her without Maſts?

A. Yes; I had Sight of her for a few Minutes.

Q. When did you ſee her without Maſts?

A. About half paſt Three o'Clock: — It was not above Ten Minutes that I ſaw any of them.

Q. Did you ſee the Fireſhip, when ſhe bore down?

A. No; I ſaw her, when ſhe blew up.

Q. Did you ſee any Ship bear down to aſſiſt the *Marlborough*?

A. No, not one; my Sight was ſo very ſhort, that I could hardly ſee any thing.

Court aſked the Priſoner, If he had any Queſtions to aſk.

Priſoner. As he was ſo far off, I ſhan't aſk him any.

Then he withdrew.

Owen Griffith, Maſter of the *Cambridge*, was called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 62.): And he declared the ſame to be true.

Q. Acquaint the Court, What you know of the Behaviour of the *Rupert* during the Action?

A. I don't think ſhe was within point-blank Shot, while her Head lay to the Southward.

Q. Was ſhe in the Line?

A. I think not.

Q. What Diſtance was you from the *Rupert?*

A. About Two o'Clock, we were about Two Miles and a Quarter from her.

Q. Did you ſee the *Rupert* engage?

A. Yes, I ſaw her fire.

Q. At what Ship?

A. I take it, that ſhe fired at the *Hercules.*

Q. How long did ſhe engage the *Hercules?*

A. I can't juſtly ſay, how long ſhe engaged.

Q. Do you think ſhe was within Point-blank?

A. No; I don't think ſhe was.

Q. Was the *Cambridge* engaged in any Part of that Day?

A. Yes.

Q. At what time did you begin to engage?

A. Between Two and Three o'Clock.

Q. Were any of our Ships, in the Rear of the Centre Diviſion, then engaged?

A. Yes, the *Royal Oak* was; ſhe fired till after we got to Leeward of her, and then ſhe went ahead.

Q. Where was the *Rupert* then?

A. Upon the *Royal Oak*'s Larboard-Bow.

Q. At what Diſtance?

A. About a Quarter of a Mile upon her Larboard-Bow, or rather ahead.

Q. What was the Reaſon the *Royal Oak* ceaſed Firing?

A. Becauſe ſhe was too far off, and had no Ship to fire at, without throwing her Shot away; we took thoſe Ships up, as they came along, and then they edged away.

Q. Was not the *Royal Oak* within Gun-ſhot?

A. Not within Point-blank.

Q. At that time, where was the *Rupert?*

A. Upon her Bow, farther from the Enemy.

Q. Were any of them in a Line?

A. No, not from the Centre.

Q. You ſay, The *Royal Oak* was out of Gun-ſhot, and the *Rupert* farther than ſhe.

A. Yes.

Q. Was you within point-blank Shot?

A. No:— If we ever were, it was when we fired at the ſternmoſt Ship of the Enemy.

Q. Do you think the *Rupert*, during all that Day's Action, was ever within point-blank Shot?

A. No, I believe not:— I can't be certain; but I am almoſt poſitive, ſhe was not; becauſe we were to Leeward of thoſe Two Ships, and we were not within Point-blank.

Q. Did you ſee the *Rupert* fire at thoſe ſternmoſt Ships?

A. I don't remember, that ſhe fired at them; for it was pretty late, before thoſe Ships could come up abreaſt of her.

Q. Did you ſee any of the Shot fall ſhort from the *Rupert?*

A. Yes; I ſaw the Shot fall ſhort from ſeveral of thoſe Ships.

Q. I aſked, Whether the *Rupert* fired upon thoſe *Spaniſh* Ships, that you engaged.

A. No, I can't ſay ſhe ever did at thoſe Four ſternmoſt Ships.

Q. You ſay they were ſcarce got abreaſt of her.

A. It muſt be late; for it was between Three and Four o'Clock before we began to engage them; and they muſt be ſome time paſſing us, before they could get abreaſt of the *Rupert*, to be ſure.

Q. How many Ships were there between you and the *Rupert?*

A. The *Dunkirk* and *Royal Oak* at firſt; but, after the *Dunkirk* broke out of the Line, there was only the *Royal Oak.*

Q. How came the *Dunkirk* to break out of the Line?— Was it to Windward, or to Leeward?

A. To Windward.

Q. Did any of thoſe Four *Spaniſh* Ships paſs the *Rupert?*

A. Yes, I believe they did; but it was late then.

Q. Was it before the Admiral wore?

A. I believe it was.

Q. Was it in the Power of the *Rupert* to annoy the Enemy, more than ſhe did?

A. She had no Ships to engage in her Station, till the *Spaniſh* Ships came up; and then it was late; and they had edged away from us, when we engaged, and hauled up again:— I believe, if ſhe had been in a Line with the Centre, which I take to be the Admiral, ſhe would not then have been within point-blank Shot; becauſe the Enemy edged away.

Q. You ſay, The *Rupert* had no Ship to engage; and you ſaid, She engaged the *Hercules.*

A. She had no Ship to engage in her Station, till the Four Ships came up to her.

Q. What do you call her Station?— If ſhe had been aſtern of the *Marlborough*, Would ſhe not have been near enough to have engaged the *Hercules?*

A. Not at a cloſe Engagement.

Q. Would ſhe have been within point-blank Shot, if ſhe had been the next Ship aſtern of the *Marlborough?*

A. If ſhe had been the next Ship aſtern, by going down to her Aſſiſtance, which ſhe might have done, ſhe would have been within Point-blank of the *Hercules.*

Q. You

Q. You ſaid, That the *Rupert* had no Ship to engage with, till the Four *Spaniſh* Ships came up; that you was to Leeward of the *Royal Oak*, and the *Royal Oak* to Leeward of the *Rupert*; Then what Ship could ſhe have to engage with, when the *Royal Oak* and you lay between her and the Enemy?

A. I can't ſay ſhe had any Ship to engage with, without ſhe had gone down to the *Marlborough*'s Aſſiſtance, and engaged the *Hercules*: —The *Royal Oak* and we engaged thoſe Four Ships; and the *Rupert* was ahead of the *Royal Oak*, or rather to Windward of her.

Q. If the *Rupert* had bore down, and been in a direct Line with the Centre, Would ſhe not have been in a proper Poſition to engage thoſe *Spaniſh* Ships?

A. No; thoſe Ships edged away, when we engaged them, and afterwards hauled up again; and therefore they would not have been within a proper Diſtance of her.

Q. Did you drive them away?

A. I don't know, whether our Shot drove them away; but they fired at us, and we at them; and then they edged away.

Asked by the Priſoner,

Q. How many Broadſides did you fire at the Enemy?

A. About Ten.

Q. Was your Jib-boom ſhot away by any Ship that was to Windward of you?

A. I can't ſay:—The Jib-boom was ſhot underneath, about a Third through; and therefore I can't ſay, whether it came from a Ship to Windward, or to Leeward; though I am apt to believe, it came from the Enemy; but I can't be certain.

Q. When you wore, Did not your Captain ask you, Has the Admiral wore; or has he ſtaid?

A. Yes; he asked me that Queſtion.

Q. Did you not then ſay, That you believed he wore? And did not your Captain then order you to wear the Ship, and haul your Wind, and follow Mr. *Leſtock* on the Starboard-Tack?

A. Yes; he did; and we wore according to his Directions.

Q. Did he not tell you, That he muſt follow the Admiral?

A. He bid me wear, and follow the Vice-Admiral.

Q. Recollect: Did you not then leave a Ship, or Two Ships, engaging thoſe ſternmoſt *Spaniſh* Ships?

A. I believe there were ſome Ships engaging afterwards; but, I believe, with their Heads to the Northward; for, I believe, the Admiral then wore; but I don't know what Ships they were, that were engaging.

Q. I ask you, At the time when you wore, did you not leave any Ships engaging the Enemy?

Witneſs. What, with their Heads to the Southward?

Priſoner. Yes.

A. I don't remember any ſuch thing.

Q. Pray, What Diſtance were thoſe Ships of the Enemy from Mr. *Leſtock*, when you wore?

A. I take it, the Sternmoſt of them, which was the *Iſabella*, was about a Mile and a Quarter; but I can't juſtly ſay to the Diſtance, it is ſo long ago:—It might be a Mile and a Quarter, or a Mile and an Half: I judge ſo, becauſe, juſt before we wore, we received a Broadſide from the ſternmoſt Ship; and, I think, we were then about Half a Mile from her.

Q. How far do you think the *Rupert* was from you, when you wore your Ship?

A. I can't juſtly ſay that:—I can't tell, indeed.

Q. After Admiral *Mathews* wore, How long was it before he engaged?

A. I believe, ſoon after, to the beſt of my Remembrance.

Q. Did you wear your Ship, upon ſeeing Admiral *Mathews*'s Signal for the Fleet in general to wear, or becauſe the Vice-Admiral wore?

A. It was becauſe the Vice-Admiral wore.

Q. How long was it after you wore, that the Signal was made by the Admiral to wear?

A. I don't remember any Signal from the Admiral; we wore ſoon after the Vice-Admiral wore;—but, I can't ſay, whether he had any Signal from the Admiral.

Q. What Diſtance do you think Admiral *Mathews* might be from the Enemy's Four Ships, when you wore?

A. That I can't juſtly ſay.

Q. Becauſe you ſay he engaged them immediately?

A. I ſay, ſoon after; and, therefore, he muſt have been pretty near the Headmoſt of them; but, Night coming on, I could not be a Judge, at that Diſtance, how far he was from them.

Q. Pray, what o'Clock was it, when you engaged thoſe Ships?

A. Between Three and Four o'Clock.

Q. And you fired Ten Broadſides?

A. Yes, thereabouts.

Q. How long might you be firing thoſe Ten Broadſides?

A. About Three Quarters of an Hour.

Q. Did you obſerve the *Rupert* then? Was ſhe backing aſtern, or edging away, or endeavouring to get nearer the Enemy, or farther off?

Q. To the beſt of my Remembrance, I think you were cloſe hauled: And I think you had your Topſails only.

Q. Was I endeavouring to get nearer the Enemy, or hauling away?

A. To be ſure, if you was cloſe hauled, you was hauling away:—I will not poſitively ſay it; but, to the beſt of my Remembrance, you was cloſe hauled.

Q. Did you obſerve, when the Fireſhip blew up?

A. Yes.

Q. Did you obſerve any Ships engaging thoſe Four Ships, when the Fireſhip blew up?

A. No.

Q. Had

Q. Had you wore, before the Fireſhip blew up?

A. We wore, after the Fireſhip blew up.

Q. Did any of thoſe Ships fire at the Fireſhip?

A. I believe the Headmoſt did; but, I think, ſhe was too far off.

Q. Did you obſerve no Ship engage that headmoſt Ship, when ſhe fired at the Fireſhip?

A. I can't ſay I did:— You would not have me ſay a thing I don't know?

Q. You ſay her Shot fell ſhort: If her Shot fell ſhort, there muſt be ſome Ship engaging her?

A. Only, juſt as ſhe paſſed ahead by us, ſhe edged away, and fired at the Fireſhip.

Q. Where was the *Rupert* then?

A. You was rather ahead of the *Royal Oak*, and to Windward withal.

Q. Then I muſt be to the Southward of the Fireſhip?

A. No, you was to the Eaſtward.

Q. And you was between me and the Enemy?

A. Yes, you lay over the *Royal Oak*'s Bow, or rather the Spritſail, to Windward.

Q. Were thoſe Ships of the Enemy to Windward, or to Leeward, of their Admiral?

A. They were in a direct Line, till they edged away, upon our Firing at them; and then they might be ſomething to Leeward of him.

Q. Did you ſee the *Rupert* engage thoſe Five Ships at all?

A. I can't ſay that I did: I don't remember.

Q. You ſay, You ſaw her Shot fall ſhort?

A. Yes; but, I take it, you was then firing at the *Hercules*.

Q. At what Time of the Day was that?

A. About Two o'Clock.

Q. And what Diſtance was you then from the *Rupert*?

A. About Two Miles and a Quarter.

Q. At that Time?

A. I judge thereabouts.

Q. You have been often in Cruiſing Ships, no doubt, and ſeen many ſingle Shot fired to bring Ships to; and been called to obſerve the Shot: I would ask you, Whether you have not many a time fired a Shot, and could not ſee it fall? And do you think, That, at the Diſtance of Two Miles and a Quarter, which you ſay you was from me, with only a curſory View, you could diſtinguiſh my Shot to fall ſhort?

A. The Caſe is greatly different, between a ſingle Shot, and a great many; one may loſe Sight of a ſingle Shot, but, in a great many, all can't eſcape; and, when I ſee a great many Shot fall ſhort, it is a plain Demonſtration.

Then he withdrew.

The Court adjourned till To-morrow Morning, Eight of the Clock.

The Third Day upon Captain JOHN AMBROSE's *TRYAL,*

On Board His MAJESTY's *Ship the* London, *at* Chatham,

TUESDAY, 22d *October*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, as were Yeſterday.

The Priſoner brought into Court by the Marſhal;

And then the Witneſſes were ordered to be called in.

John Stevens, Maſter of the *Royal Oak*, called in, and ſworn.

Q. Acquaint the Court what you know of the *Rupert*, from the Beginning to the End of that Day's Engagement.

A. When the Admiral bore away, we bore away along with the *Rupert*; and a *Spaniſh* Ship firing at us ſeveral times, and hitting us, we, being a little too near the *Rupert*, laid all aback; and that brought us to Leeward of the *Rupert*, and we began to engage the *Spaniſh* Ship; which, ſome time afterwards, went out of the Line to Leeward: After that, we hauled up to the *Rupert*; and Captain *Williams* hailed Captain *Ambroſe*; and aſked him, If he would not go down to thoſe Four Ships coming up: I did not hear that any Anſwer was made; but, about Half an Hour afterwards, ſeeing thoſe Ships come up, we bore down to within a Quarter of a Mile of them; I did not obſerve that the *Rupert* followed us: After we engaged about an Hour, ſeeing no Ship coming to our Aſſiſtance, we hauled up again to the *Rupert*, who was then about half a Mile upon our Weather-Bow; and afterwards, when the Admiral wore, the *Rupert* wore, and we wore likewiſe.

Q. When you firſt engaged that Ship, How far was the *Rupert* from you?

A. Within a Quarter of a Mile, upon our Weather-Bow.

Q. Did ſhe fire at that ſingle Ship?

A. I believe ſhe did.

Q. Was ſhe within Point-blank?

A. I can't ſay whether ſhe was within Point-blank, or no.

Q. Then you hauled up, and hailed the *Rupert*?

A. Yes.

Q. What did Captain *Ambroſe* ſay, when you hailed him?

A. I ſaw Captain *Ambroſe* in the Stern-Gallery, but I did not hear him make any Anſwer; but our Mate ſaid, he aſked what we ſaid.

Q. How long did the *Royal Oak* lie ſtill after Hailing?

A. About Thre-quarters of an Hour.

Q. Did the *Rupert* bear away with you towards the Four Ships?

A. To the beſt of my Remembrance, ſhe did not.

Q. Did you ſee her fire?

A. I can't ſay I ſaw her fire at any of thoſe Four Ships; I believe ſhe fired at the ſingle Ship.

Q. Did you ever haul your Fore-tack on board, and haul to Windward of the *Rupert*?

A. No, we never did:—We were always to Leeward of the *Rupert*.

Q. Was you upon the Quarter-deck?

A. I never was off the Quarter-deck all the time.

Q. When you had done Firing upon thoſe Four Ships, then you hauled up?

A. Yes:—And, when the Admiral wore, we did the ſame.

Q. What was the *Rupert* doing, when you was engaging thoſe Four Ships?

A. I did not obſerve.

Q. When you was engaging thoſe Four Ships coming up, Did you ever obſerve the *Rupert* to yaw backwards and forwards, or back her Sails, to near the Enemy?

A. I never did; I did not obſerve:—We were engaging that time ourſelves; and I did not obſerve what the *Rupert* did.

Q. Was it in the *Rupert*'s Power to have bore down ahead of the *Royal Oak*, and engaged the headmoſt of the Four Ships coming up?

A. Yes; to be ſure it was:—She might have bore down, and have attacked her.

Q. When you left off Firing, and hauled up to the *Rupert*, as you found no Ships coming to your Aſſiſtance, What Ship was you then firing at?

A. I'm certain, it was the Third Ship:—The Third Ship was the laſt we fired at:—And then the Fourth Ship, which was the ſternmoſt of all, was right aſtern of us, as near as I can judge.

Q. Do you then reckon, that either the headmoſt, or Second, of thoſe Ships was abreaſt of the *Rupert*?

A. Yes, to be ſure the headmoſt muſt have been abreaſt of her.

Q. What Diſtance was the *Rupert* then from you?

A. About Half a Mile:—The *Rupert* was Half a Mile diſtant upon our Weather-Bow.

Q. Did you obſerve the *Rupert* fire at the headmoſt of thoſe *Spaniſh* Ships?

A. I did not obſerve it indeed.

Q. Recollect, and be very punctual, Did Captain *Williams* hail the *Rupert*, after Hauling up from the Firſt Ship, or after he hauled up from the Four Ships?

A. After we hauled up from the Firſt Ship.

Q. Did you hear Captain *Ambroſe* hail Captain *Williams*? Are you ſure Captain *Ambroſe* did not hail him?

A. I never did hear any ſuch Thing; nor did I hear of any body that did hear him.

Q. As you was Maſter, I ſuppoſe you was upon the Quarter-deck the whole time?

A. Yes.

Q. Did you ever perceive the *Rupert* to give any Aſſiſtance to any Ship, from the Beginning of the Engagement, till the Admiral bore away?

A. I only ſaw her fire at the ſingle Ship.

Q. Was ſhe within Point-blank?

A. I can't ſay; but I believe, not:—For, I think, we were not within Point-blank.

Q. Was ſhe near enough to do Execution?

A. I can't ſay.

Q. Did any Shot go through your Sides?

A. Yes; through both Sides.

Q. Did any go over you?

A. Yes; as far as we were from the Enemy.

Q. Did they go as far as the *Rupert*?

A. Yes:—I believe they went over the *Rupert*?

Q. All the while you engaged thoſe Four Ships, Did the *Rupert* give you no Aſſiſtance?

A. No:—I did not obſerve, that ſhe did.

Q. If the Shot that came over you had taken the *Rupert*, Could they have done Execution?

A. I can't ſay:—They fell over us into the Water.

Q. Did you take any notice of the *Cambridge* coming to your Aſſiſtance?

A. When the *Cambridge* was coming up, we ſet our Foreſail to go ahead of her: Preſently after, the Admiral made the Signal to wear; and, when the Admiral wore, and the *Rupert* had wore, we wore likewiſe.

Q. What did you obſerve of the *Cambridge*?

A. She came up a little upon our Lee-Quarter, and began to fire at the Third or Fourth of the *Spaniſh* Ships; then we ſet our Foreſail, and made Sail to go ahead of the *Cambridge*; ſoon afterwards, the Admiral wore; and the *Rupert* and we did the ſame.

Q. Repeat the Words Captain *Williams* ſaid, when he hailed the *Rupert*.

A. He aſked, Whether Captain *Ambroſe* did not think proper to bear down to thoſe Four Ships?

Q. What were the Words?

A. Captain *Williams* hailed Captain *Ambroſe*; and ſaid, Captain *Ambroſe*, Do you think proper to bear down to theſe Four Ships?—I can't tell the Words exactly, it is ſo long ago; but thoſe were

were the Words, to the beſt of my Remembrance.—I heard no Anſwer.—So Captain *Williams* ſtamp'd, and ordered the Helm aweather directly, and bore down himſelf to the Four Ships.

Q. What Diſtance was the *Rupert* to Windward of you, when you engaged the Firſt Ship?

A. About a Quarter of a Mile upon our Bow.

Q. How far was you from that Ship?

A. Near half a Mile.

Q. I think you ſay, when you bore down firſt, the *Rupert* was Two Cables Length upon your Bow.

A. Yes.

Q. And that the *Rupert* was of no Service to you?

A. I don't ſay, that the *Rupert* was of no Service to us, in engaging that Ship; for I don't know but ſhe might have been of Service to us.

Q. When you firſt began to engage the Four Ships, Was the headmoſt of them before your Beam, upon your Beam, or how?

A. The headmoſt was upon our Quarter.

Q. How was the Firſt Ship you engaged from you?

A. She was upon our Beam.

Q. How did the *Rupert* then bear from you?

A. About Two Points upon our Weather-Bow, and a Quarter of a Mile diſtant.

Q. Did you then ſee the *Eſſex* and *Dorſetſhire?*

A. I did not obſerve the *Dorſetſhire*; I ſaw the *Eſſex* to Windward a great Way; more than half a Mile to Windward of the *Rupert.*

Q. Did you then ſee the Admiral?

A. Yes.

Q. How did he then bear from you?

A. He was then about a Point upon our Weather-Bow:—When we engaged the ſingle Ship, to the beſt of my Remembrance, the Admiral was near right ahead; but afterwards, when we engaged the Four Ships, he was about a Point upon our Weather-Bow.

Q. When you engaged the fartheſt to Leeward, Was you in a Line with the Admiral?

A. We were then rather to Leeward of the Line:—The Admiral was then a Point, or Two, upon our Weather-Bow.

Q. How was the *Marlborough* then?

A. I think, near right ahead; or a little upon our Lee-Bow.

Q. When you began to engnge the Four Ships, What Diſtance was the *Rupert* from you to Windward?

A. About Half a Mile, upon our Weather-Bow.

Q. How near was you then to the Enemy?

A. About a Quarter of a Mile, when we were neareſt.

Q. What did you do then?

A. As ſoon as we had done engaging thoſe Four Ships, we hauled up to the *Rupert*; and, quickly afterwards, wore after the Admiral.

Q. When you hauled up, Was the *Rupert* then in a Line with the Admiral?

A. Yes; I think ſhe was.

Q. Can you be ſure?

A. I think ſhe was in a Line with the Admiral, when we hauled up; for the Admiral, before that, had hauled off.

Q. How long was it after you hauled up, before the Signal for Engaging was hauled down?

A. About Ten Minutes.

Q. After the Admiral and you wore, How many Ships were there between the Admiral and you?

A. The *Eſſex* and *Rupert.*

Q. Which Ship was next to the Admiral?

A. To the beſt of my Knowlege, the *Rupert* was next to the Admiral; becauſe the *Eſſex* was a long time wearing, and could not get into her Station, but fell in pretty cloſe with us.

Q. Where was the *Norfolk* then?

A. I did not ſee her.

Q. Where was the *Dorſetſhire?*

A. I don't remember to have ſeen the *Dorſetſhire*:—We were but juſt come into the Line, and I did not know one Ship from another.

A. Are you ſure the *Rupert* was the next Ship to the Admiral?

A. Yes; I am almoſt ſure, ſhe was the next Ship aſtern of the Admiral, after the Admiral wore.

Q. Did you ever ſee the *Hercules* wear, to come to the Aſſiſtance of the Four Ships you engaged?

A. No:—I never ſaw the *Hercules* wear.

Q. Do you think the Reaſon why the *Real* wore, was becauſe Four Ships aſtern of her were ſo warmly engaged by the *Rupert* and *Royal Oak?*

A. I can't tell any thing of that.

Q. What was the Reaſon, do you think, of the *Real*'s Wearing?

A. I can't tell.

Q. Did you ſee the Fireſhip?

A. Yes.

Q. Was ſhe near the *Real?*

A. Yes:—She was very near the *Real*, when the *Real* bore away; which might be the Reaſon of her Bearing away.

Q. Did you ſee the *Marlborough* loſe her Maſts?

A. I ſaw her, after her Maſts were gone.

Q. Did you ſee her ſoon after?

A. It was a little time after.

Q. Did you ſee the *Rupert* go down to the Aſſiſtance of the *Marlborough?*

A. I did not ſee any Ship go to her Aſſiſtance.

Q. Did you ſee the *Rupert* go down to cover the Fireſhip?

A. I did not ſee any Ship at all go to cover the Fireſhip.

Q. After you wore, you ſay the *Rupert* was the next Ship to the Admiral; Was you in a Line

Line with the Admiral; or to Windward, or to Leeward, of him?

A. After we wore, I think, we were to Windward of him:— We engaged thoſe Ships very near afterwards, and engaged them as they paſſed us; but then it was juſt dark.

Q. Did the *Rupert* wear ahead, or aſtern, of you?

A. A head of us, to be ſure.

Q. I think you are pretty clear, with reſpect to Captain *Williams*'s hailing the *Rupert*; Did Captain *Ambroſe*, when he came into the Gallery with the Trumpet, make no Anſwer?

A. I did not hear any Anſwer.

Q. Did you hear any Voice?

A. No.

Q. Did Captain *Williams* repeat his Hailing?—Did he call to Captain *Ambroſe* a Second time?

A. Yes; immediately, upon hearing no Anſwer to the Firſt: And Captain *Williams*, ſeeing Two or Three Guns fired from the *Rupert*; ſtamp'd, and called to him; and ſaid, God damn it; you may as well throw your Powder and Shot into the Sea.

Q. Did Captain *Williams* hail Captain *Ambroſe* twice?

A. Yes.

Q. Was This at the ſame Juncture?

A. Yes; he called, but Captain *Ambroſe* returned no Anſwer.

Q. Was the *Rupert* then firing at the Enemy?

A. Yes; a few Shot were fired.

Q. Sure then, the *Rupert* muſt have been to Leeward of the *Royal Oak?*

A. No; I am ſure the *Rupert* never was to Leeward of us: The neareſt was, when we were hauled up, under her Lee-Quarter.

Aſked by the Priſoner,

Q. At what o'Clock did you engage the Firſt Ship?

A. About Two, or Half paſt Two.

Q. Did that Ship ever paſs me?

A. No; ſhe went away to Leeward, a great Way.

Q. Was it poſſible, I could get to fire at that Ship, which you have brought out of the Clouds to fire at, without your ſhooting out of my Way, or her ſhooting ahead of you?

A. You did fire at that Ship; and ſhe afterwards went out of both our Ways.

Q. You ſay, You never heard me hail the *Royal Oak?*

A. No.

Q. Did the *Royal Oak* follow me, or I follow her, down to the Four Ships?

A. We never followed you; nor did I obſerve, that you followed us.

Q. When you came to thoſe Four Ships; How far do you ſay I was from you?

A. Near Half a Mile.

Q. How far do you think I might be upon your Bow?

A. About Two Points.

Q. When you engaged thoſe Four Ships aſtern; How did they bear from you, when you bore down to them, and brought up again, and began to engage?—I ſpeak as to the Firſt of them.

A. The Firſt was upon our Quarter, when we began to engage her; but ſhe went ahead of us; and ſo did the Second.

Q. Did ſhe bear away, when ſhe went ahead of you, or did ſhe keep her Line?

A. She continued her Courſe in the ſame Line, edging away Large, after her Admiral: They were all edging away: I believe, they thought, that their Admiral was likely to be taken; and therefore they had a mind to ſcout for it.

Q. Did ſhe ever come my Length?

A. Yes, I believe ſhe did.—I believe Two or Three of them came your Length.

Q. Did they paſs me?

A. I believe they did.

Q. Are you ſure of it?

A. No; I am not ſure of it, indeed:—I can't tell whether any of them paſſed you, or not.

Q. Are you ſure, that any of them got the Length of the *Rupert?*

A. I am ſure, ſome of them muſt have been the Length of the *Rupert*; but whether they paſſed her, or not, I can't tell.

Q. As thoſe Ships were coming up, and were right aſtern of you, and I was right ahead; How was it poſſible for me to have got at them, till they had paſſed you?

A. If you had bore down with us, we ſhould have been farther aſtern, and you ahead of us; but you could not come at them, unleſs you had bore down with us.

Q. Did you never ſhoot to Windward of me?

A. No, never.

Q. Did you never get your Fore-tack on board, and haul your Mizen out, and go to Windward of me?

A. We never did—get our Fore-tack on board, till we wore.

Q. Did you not ſee me, when you was aſtern of me, yaw my Ship; and bring both Sides to bear on thoſe Ships, as they came up; and engage them with both Broadſides?

A. No; I did not ſee it.

Q. Now I will aſk you ſome Queſtions, as to what you ſaid before: When you was ordered home for *England*, your Captain, I think, was a Priſoner?

A. Yes.

Q. Be particular in your Anſwers, to what I am going to aſk, becauſe it is of very great Conſequence to me.

A. Yes; I will.

Q. You came down in the *Rupert* along with us, to *Port-Mahon*, and thence to *Gibraltar?*

A. Yes.

Q. Did

Q. Did you not then hear, that the Maſter of the *Eſſex* wrote to your Captain, to take him Home with him; that he would be an Evidence againſt you, for Captain *Williams*; and that he heard you ſay, that your Captain did not ſee how nigh he was to the Enemy; that when your Captain bid them to put the Helm aweather, to bear down nearer the Enemy, that you ordered the Helmſmen to put the Helm a-lee, to haul off from the Enemy?

A. No.

The laſt Queſtion ſeeming to the Court, to be an improper one; the Priſoner was told, that he ſhould not aſk any Queſtions, that might lead the Witneſs to accuſe himſelf.

Witneſs. I never was accuſed by my Captain.

Priſoner. I only want to make it appear to the Court, that the Man is obliged to ſwear what he does, in order to ſave himſelf.

Witneſs. You are calling my Character in Queſtion; I think, I ought to anſwer you.

Court to the Priſoner,

If you have any-body to invalidate his Evidence, you may call them in; but you muſt not aſk the Witneſs Queſtions tending to accuſe himſelf.

The Court, however, agreed, That if the Witneſs thought proper to anſwer the Queſtions, the Priſoner might aſk what he thought fit.

Q. Was you ever aſked, after your Captain was made a Priſoner, any time in your Paſſage, Was the headmoſt of thoſe Five Ships abreaſt of you? and was not your Anſwer, No; not till the *Cambridge* came down, and engaged them?

A. I never ſaid ſo; I don't remember any thing about it.

Priſoner to the Court,

I can prove that he has ſaid quite otherwiſe before: And I hope this Man's Evidence will have no Weight, if I can prove he ſaid ſo.

Court. It lies upon your Witneſſes to prove thoſe Things; and then we ſhall weigh the Evidence together.

Q. Was not you aſked, Where was your Ship at that Time?

A. No; I don't remember it.

Q. Was not your Anſwer, We were then upon the *Cambridge*'s Weather-beam, or ſomething abaft it; the Enemy's Shot, that came over the *Cambridge*, ſtruck us?

A. No; I never ſaid any ſuch thing; I don't remember any thing of it.

Q. Was you aſked, Did you ſet your Foreſail, and haul your Mizen out, and run upon the *Rupert*'s Weather-Beam, and there brought to again?

A. No; I never was aſked that Queſtion.

Q. Did you anſwer, We did?

A. No.

Q. Was you aſked, What was the Reaſon of that?

A. No.

Q. Did you anſwer, Becauſe, as the Five Ships came up, they raked us; one of the Shot ſtruck the After-Part of the Main-maſt; one the Mizen-maſt, and one the Mizen-yard?

A. I ſaid ſome of the Shot did ſtrike us; but I never mentioned any Thing of the Mizen-yard.

Court asked,

Q. Do you remember any thing that paſſed, in your private Converſation with any body, upon this Matter?

A. I might have had private Converſation about theſe Matters; and I might have ſaid ſeveral Things, which I have forgot.

Court to the Priſoner,

The Witneſs is now examined upon Oath, and is to anſwer the Queſtions asked of him; but you are not to ask him, what paſſed in private Converſation, which can have no Weight with the Court: Nor is the Time of the Court to be taken up in ſuch Diſcourſe.

Priſoner. I think the Time of the Court is to be employed in the Behalf of a Priſoner, when a Man's Life is at Stake: But I ſubmit to ask no more Queſtions.

Then the Witneſs withdrew.

Priſoner. I was made a Priſoner, and this Maſter was ordered Home; and, when I heard the *Royal Oak*'s People had laid ſuch a Charge againſt me, I inquired into it. And this Man, in his Paſſage, ſaid ſeveral Things, which was the Reaſon of my asking thoſe Queſtions. I hope the Court will overlook any thing that I may ſay in a Heat; and, if I ask any improper Queſtions, that they will not take it amiſs.

Court. We ſhould be glad, that you ſhould make it appear, that you are not guilty of any thing laid to your Charge; and do not take any thing amiſs, that you ſay.

Captain *George Stepney*, of the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 63.): And he declared the ſame to be true.

Q. Do you know any thing of the *Rupert*'s Behaviour?

A. Nothing particular—I ſaw her engaged, and I ſaw her fire.

Q. What time did you ſee her engaged?

A. Between Two and Three o'Clock.

Q. Was ſhe within Point-blank?

A. If you confine it to Three hundred Yards, I am ſure none of the Ships aſtern of the *Marlborough* were at that Diſtance.

Q. Did you ſee her, after that time?

A. She continued engaged a great while; but I never made any particular Obſervation of her.

Q. Did you ſee her go down, to aſſiſt the *Marlborough*, or cover the Fireſhip?

A. No.

Q. Was ſhe in a Line with the *Marlborough?*

A. No; by no means.

Q. When you ſaw the *Rupert* firing at the Enemy, Could ſhe have gone nearer, and engaged, without going to Leeward of the Line?

A. To be ſure ſhe might; without going to Leeward of the *Marlborough.*

Q. Was ſhe in a Line with the *Namur?*

A. No; not when the *Namur* firſt began to engage: For then ſhe could not be in a Line with the *Marlborough*, without being in a Line with the *Namur.* But, after the *Namur* was hauled off, I can't ſay, whether ſhe was in a Line with her, or not.

Q. Was there Wind enough for the *Rupert* to have gone nearer, and engaged?

A. Yes.

Q. Was ſhe diſabled?

A. No; I did not ſee that ſhe was.

Q. Did you ever obſerve her in a Line with, or to Leeward of, the *Royal Oak?*

A. She appeared, to me, to Windward of the *Royal Oak*, and the *Eſſex* to Windward of her: I thought the *Royal Oak* the neareſt—I think ſhe was rather to Windward of the *Royal Oak.*

Q. When you ſaw the *Rupert* engaging, what Ship did ſhe engage?

A. I can't ſay: She could have no Ship to engage, till the headmoſt of the ſternmoſt *Spaniſh* Ships came up.

Q. Did the *Royal Oak*, or the *Rupert*, engage a ſingle Ship?

A. I can't tell what Ship they engaged; I ſaw them fire.

Q. How far was you from the *Rupert*, when you ſaw her?

A. About Three Miles—A good Three Miles, or better.

Q. Could you obſerve, at that Diſtance, whether any one particular Ship, or all thoſe Ships, were out of the Line?

A. They were all out of the Line, till the *Dorſetſhire* bore down.

Q. Did you obſerve, whether the *Rupert* was in a Line with the Admiral, after he had hauled off?

A. I don't know, but ſhe then might be in a Line with the Admiral; but I can't be poſitive.

Q. Was you upon the Quarter-deck all the Time?

A. Yes.

Q. Then you could obſerve all the Motions of thoſe Ships. And did you not diſcourſe with your Admiral, upon their Neglect of Duty?

A. I never talked with my Admiral about it.

Q. Was it inſerted in your Log-book?

A. No: The Admiral thought, and everybody in the Ship thought, they were out of their Station.

Q. Was there any Signal made by the Admiral, when thoſe Four Ships were out of the Line, for them to keep the Line?

A. No; none but the general Signal.

Q. As the *Rupert* was ahead of you, and to Leeward, you muſt have had a good View of her; did you ever obſerve her to yaw, ſo as to bring her Starboard-Broadſide, and her Larboard-Broadſide, to bear upon the Enemy?

A. I did not obſerve it.

Q. Did you, moſt part of the Day, ſteer with the *Namur*, or *Marlborough?*

A. With the *Marlborough*, all Day, right ahead.

Q. Upon which Bow did you then ſee the *Rupert?*

A. Upon the Larboard-Bow.

Q. Were not the Captains of the *Cambridge* and *Dunkirk* charged with a Neglect of their Duty, and brought to a Court-Martial?

A. Yes.

Q. What was the Conſequence of it?

A. They were acquitted.

Q. In what Poſition was the *Dunkirk*, all the Day, with regard to the *Rupert?*

A. The *Dunkirk*, for the greateſt Part of the Time, was to Windward, and ahead of her Station; and, for that Reaſon, Mr. *Leſtock* fired a Shot, to bring her into her Station—She was then Two Miles diſtant from Mr. *Leſtock.*

Asked by the Priſoner,

Q. Had you the Admiral's Maſts in one, or the *Marlborough*'s Maſts in one?

A. No; we never had their Maſts in one; nor could we, in our Situation.

Q. Had not ſome of the Ships, of your Diviſion, Studding Sails out on both Sides, when you were coming down, after the Engagement began?

A. I don't know—I think they could not; becauſe the Wind was not then right aft—The *Torbay* had all the Sails ſet ſhe could croud; but, I think, not Studding Sails on both Sides.

Q. As you was coming down, with Studding Sails ſet, you muſt have our Ships ahead of you.

A. I ſaw the *Rupert*, and all the Ships, ahead upon the Larboard-Bow.

Q. Do you think, it was poſſible, at Three Miles and an Half's Diſtance, for you to judge, whether thoſe Ships could be in a Line with the Admiral?

A. It is my firm Belief, that neither you, nor any of the Ships aſtern of the *Marlborough*, were in a Line with the Admiral, or *Marlborough.*

Q. A Man muſt give a Reaſon for what he ſays.

A. I ſaw thoſe Two Ships, the *Namur*, and *Marlborough*, bear away, to attack the *Real*; and no others.

Q. I deſire you may anſwer, as a Seaman: Before the Helm was put aport, Suppoſe you had ſtood South-weſt, and the Ships lay South-ſouth-eaſt, in a Line; Would you have brought them upon your Lee-Bow, when your Ship's Head pointed the ſame Courſe that the Ships in the Centre ſteered?

A. Yes.

Q. Did you not ſee the Ships immediately aſtern of the Admiral bear away at all, when he did?

A. No; not equally with the Admiral, and *Marlborough:* And neither you, nor any of thoſe Ships, did engage, within the Diſtance that they did—That is my Opinion.

Q. What time did I begin to fire?

A. I believe, about Two o'Clock.

Q. At what Ship?

A. I can't tell at what Ship you could fire, till the headmoſt of the Four *Spaniſh* Ships came up—Becauſe, I think, you was too far aſtern to fire at the *Hercules*.

Q. You could ſee, I was not at a proper Diſtance to do Execution; and yet you can't tell, what Ship I fired at.

A. No; I can't tell, what Ship you engaged.

Priſoner. If I was upon my Oath, I think I ſhould be more cautious, before I ſwore any thing, in ſuch a Caſe.

Q. When you wore your Ship, in the Evening, Did you ſee any Ships engaging the Ships of the Enemy, whether you call them Four, or Five?

A. Yes; all of them engaged, on different Tacks.

Q. But did you not ſee ſome of our *Engliſh* Ships engaging thoſe Five *Spaniſh* Ships coming up, immediately before you wore?

A. Yes; they were engaged. But I can't ſay any thing particular.

Q. Can you tell what Ships were engaged?

A. I can't tell, particularly—I can't tell any thing of the latter Part of the Action, or how near you was to the Enemy, or how much you was engaged.

Q. Was you not nearer to us, the latter Part of the Action, than at firſt?

A. To be ſure—I ſay you was engaged at both times; and I don't know, but you might be a great deal nearer, the latter End of the Engagement, than in the Beginning: For I believe, all your Ships were nearer.

Court asked,

Q. Could you diſtinguiſh the *Rupert* from any other Ship, juſt before you wore?

A. No; I did not diſtinguiſh her from the other Ships.

Priſoner aſked,

Q. Did you ſee the Fireſhip blow up?

A. Yes.

Q. Was it before, or after you wore?

A. Before.

Q. Did you ſee no Ship engaging the headmoſt of thoſe Ships, when the Fireſhip went down?

A. I ſaw no Firing when ſhe blew up.

Q. I ſuppoſe you was then looking out?

A. Yes.

Q. And did you ſee no Ship engaging the Enemy at that time?

A. I can't ſay, that I did;—I don't know; I don't remember ſo particularly towards the Evening, as at firſt.

Priſoner. It is ſtrange, that you can't remember a Thing that is of ſo much Conſequence to me.

Witneſs. If I could, I would do it with all the Readineſs in the World; but I can't undertake to ſay any thing, that I don't know.

Q. Did any of thoſe *Spaniſh* Ships paſs me?

A. I think the headmoſt muſt have paſſed you; but you muſt conſider the Diſtance we were from you.

Priſoner. I wiſh you had conſidered the Diſtance, before you had ſwore againſt me.

Witneſs. I don't know what you mean; I ſcorn to ſpeak any thing to any Man's Prejudice.

Q. Did not thoſe *Spaniſh* Ships bear away?

A. Yes, after the Fireſhip appeared to be going down, they bore up for their Admiral:—They bore up to his Aſſiſtance.

Q. Do you imagine the *Rupert*, and the other Ships that engaged thoſe Five Ships, occaſioned their Bearing away, or prevented their getting up to the Aſſiſtance of their Admiral?

A. They ſteered a proper Courſe, till the Fireſhip blew up:—I believe the Fireſhip occaſioned the *Real* to bear away; and they bore away after their Admiral, and endeavoured to deſtroy the Fireſhip; but I don't think their Shot reach'd her.

Q. You was asked, Whether the Fire of our Ships, the *Rupert* and *Royal Oak*, did not oblige them to bear away?

A. No, I believe not; I believe the Fireſhip appearing, made them bear away to ſupport their Admiral, and deſtroy the Fireſhip.

Q. Then they muſt have been to Windward of their Admiral, if they bore away to him?

A. When the Fireſhip bore down, they went away Large, for their Admiral, who bore away quite before the Wind.

Q. Did you ſee their Admiral ſend a Boat on board thoſe Five Ships, and that they bore away immediately afterwards?

A. No, I did not.

Q. You ſaw ſome of thoſe Ships crippled, did you not?

A. There were Four or Five damaged.

Q. From whoſe Shot were thoſe Five Ships tattered, as none of your Diviſion fired upon them?

A. Yes, the *Cambridge* of our Diviſion engaged them, as well as you.

Q. By whom muſt they have ſuffered? Muſt it not have been by the *Rupert* and *Royal Oak*, ſince none of your Diviſion hurt them?

A. They might receive Part of that Damage in paſſing by your Diviſion, upon different Tacks, after the Admiral wore.

Q. What time did the *Cambridge* begin to engage?

A. I believe between Three and Four o'Clock,—And the *Dunkirk* alſo engaged them.

Q. How long did they engage? — I ſpeak only of the *Cambridge*.

A. I

A. I really can't tell; I ſaw them fire.

Q. Do you think they fired One, Two, or Three Broadſides, or how many?

A. I did not take notice.

Q. Was you not upon the Quarter-deck?

A. Yes: But do you think my Eyes were always fixed upon a particular Ship's Motions, to count how many Broadſides ſhe fired?

Q. How ſoon did the *Dunkirk* engage?

A. She engaged ſoon after the *Cambridge*.

Q. How long was it after the Shot was fired to make them bear away, that they engaged?

A. Soon after.

Witneſs to the Court,

I don't think this Matter has any Relation to Captain *Ambroſe*'s Caſe.

Priſoner. You are not to judge of that.

Court. Perhaps Captain *Ambroſe* may draw ſomething from theſe Circumſtances: You will anſwer his Queſtions; but he ſhould confine himſelf to asking Queſtions, and not fall into Converſation.

Q. What Sail had thoſe Five *Spaniſh* Ships out?

A. I don't know.

Q. What Ship did the *Neptune* fire at?

A. The ſternmoſt Ship.

Q. How did ſhe bear from you, when you fired at her?

A. Before our Beam.

Q. Do you remember, when Captain *Knowler* came on board you in the Morning, was the Signal for the Line of Battle out?

A. I can't tell;—I really can't ſay.

Then he withdrew.

Lieutenant *Carr Scrope*, of the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 64.): And he declared the ſame to be true.

Q. You ſay, The *Rupert* never was in the Line?

A. I don't ſay ſhe never was:—She did not bear down equally with the Admiral.

Q. When the Admiral firſt began to engage, was ſhe in the Line?

A. No.

Q. Did you ſee her engage?

A. Not in particular: I ſaw Shot fired from all thoſe Ships.

Q. When did ſhe begin to engage?

A. I ſaw her firing about Three o'Clock.

Q. Did you ſee any Shot fall ſhort?

A. I ſaw ſeveral Shot fall ſhort.

Q. Where was you quartered?

A. Upon the Lower-Gun-deck.

Q. At what Diſtance did ſhe engage?—Was ſhe within Point-blank?

A. No.

Q. Did you ſee the *Marlborough*, when her Maſts went away?

A. No, I ſaw her afterwards.

Q. Did you ſee the *Rupert*, or any Ship, go down to her Aſſiſtance?

A. No.

Q. Did you ſee the Fireſhip bear down?

A. No.

Q. Did you ſee her blow up?

A. I ſaw the Smoke of the Wreck, after ſhe blew up.

Q. After the Smoke went away, did you ſee any Ship that had gone down to cover her?

A. No.

Asked by the Priſoner,

Q. How far was I from you?

A. I think about Three Miles, or better.

Q. Were there other Ships firing at the time that I did; or did you mind my Ship firing only?

A. I did not mind any Ship in particular.

Q. You could diſtinguiſh the Shot that fell ſhort: Did they fall ſhort from my Ship, or any other?

A. I can't ſay what Ships they fell ſhort from: They were from the Ships ahead; but I could not diſtinguiſh the particular Ships.

Q. How did I bear from your Ship? Was I right ahead, or upon your Weather or Lee-Bow?

A. I don't know your Ship in particular; but the whole Four Ships were to Windward of the Line, upon our Weather-Bow.

Q. Pray, If you came down large, with Studding-Sails ſet; if you had lain your Ship's Head upon the ſame Point of the Compaſs that Admiral *Mathews* did, would you not have been Three or Four Points more to Windward than you were?

A. We ſteered for the Admiral: When I ſaw the Admiral, I went into the Rail of the Head, to ſee him; and therefore he muſt be right ahead.

Q. Suppoſe the Admiral's Head lay to the South, and yours to the South-weſt; if you had come up to the South, would you not have had all the Ships upon your Lee?— The Admiral was cloſe hauled, and you had your Studding-Sails ſet: If you had brought up, ſo as to have laid your Heads the ſame Way as the Admiral did, would not all thoſe Four Ships have been to Leeward of you?

A. No, I think, they would not.

Q. Did you fire a Broadſide at the Enemy's Ships?

A. Yes.

Q. At what Ship?

A. At the ſternmoſt of the Enemy.

Q. How did ſhe bear from you then?

A. Upon our Beam, or thereabouts.

Q. What Diſtance might you be from me then?

A. I can't recollect: I was then below at my Quarters, and could not ſee you.

Q. When you wore, Did you ſee no Ships engaging?

A. No: I was below then.

Q. When the Fireſhip blew up, did you ſee no Ships engage the *Spaniſh* Ships?

A. No, I ſaw none engaged: — I ſaw the Wreck of the Fireſhip; for our People cried out, The *Real* was on Fire; upon which I looked out of the Port, and ſaw the Wreck.

Then he withdrew.

Lieutenant *John Lempriere*, of the *Neptune*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 65.): And he declared the ſame to be true.

Q. Did you ſee the Admiral, when he firſt engaged?

A. Yes.

Q. Did you ſee the *Rupert* at that time?

A. I ſaw the Ships aſtern, of which the *Rupert* was one.

Q. Was ſhe in the Line when ſhe hauled up?

A. I can't ſay: I was then at my Quarters below.

Q. Did you ever ſee the *Rupert* afterwards?

A. No, I did not; for I did not come upon Deck, till the Signal was made to leave off Chace.

Q. Did you obſerve the Four or Five *Spaniſh* Ships, when our Fleet wore in the Evening?

A. It was duſkiſh, and I could not diſtinguiſh one Ship from another.

Q. Did the Admiral, and the Ships aſtern, engage?

A. I can't really ſay: There were ſeveral fired; but I can't tell which, it being duſkiſh.

Q. Did you obſerve the *Marlborough* loſe her Maſts?

A. No.

Q. Did you ſee her at no time?

A. Not till I looked out at the Fireſhip.

Q. Where did you look out?

A. At the Larboard Ports below.

Q. Did you ſee the Fireſhip, when ſhe blew up?

A. No:—I ſaw her Wreck ſoon after, out of the Larboard Ports.

Q. Did you ſee any Ship near her?

A. No.

Q. Did you ſee no Ship go to aſſiſt the *Marlborough*, or cover the Fireſhip?

A. No.

Aſked by the Priſoner,

Q. Did you not come to me with a Meſſage from Admiral *Leſtock*, the next Day, when we were going down in a Line, to deſire me to break the Line, and join him, and leave Mr. *Mathews?*

A. No:—We were ordered to lead upon either Tack; and the Meſſage from the Vice-Admiral was, to acquaint Captain *Ambroſe*, as the Admiral had hoiſted his Flag on board the *Ruſſell*, that the *Cambridge* was ordered to take the *Ruſſell*'s Station, and to deſire him to cloſe the Line of Battle abreaſt.

Court aſked,

Q. When was that?

A. The Day after the Action,—between Two and Three o'Clock in the Afternoon.

Priſoner aſked,

Q. Do you recollect the Converſation that then paſſed between us?

A. No:—I can't ſay I do.—I remember you was in your Cabin, and I went to you.

Q. Did I not ask you, Why none of the Ships in your Diviſion came down to aſſiſt the *Royal Oak* and me?

A. I don't remember any ſuch Converſation.

Then he withdrew.

Lieutenant *Ericks*, of the *Neptune*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 66.): And he declared the ſame to be true.

Q. Where was you quartered?

A. On the Middle-Gun-deck.

Q. Did you ſee the Admiral, when he firſt began to engage?

A. Yes.

Q. Did you ſee the Four Ships aſtern of the *Marlborough?*

A. Yes.

Q. Did you ſee the *Rupert?*

A. I believe ſhe was one of the Four.

Q. Was the *Rupert* to Windward of the Line, when the Admiral engaged?

A. Yes.

Q. Did you ſee her, when ſhe hauled up?

A. No, I went down to my Quarters.

Q. Did you ſee the *Rupert* engage?

A. No.

Q. Not at any time of the Action?

A. No.

Q. What Diſtance might you be from the *Rupert*, when the Admiral began to engage?

A. I can't ſay exactly; but, I believe, about Four Miles.

Q. Did you never ſee her fire?

A. No.

Q. Did you ſee any of the Four Ships fire?

A. No; I can't ſay, that I did.

Q. You ſay the *Marlborough* was not aſſiſted by any of thoſe Four Ships?

A. No; I believe ſhe was not.

Q. Did you ſee the Fireſhip?

A. No; I juſt looked upon our People's Huzzaing, and crying out, The *Real* was on Fire; and then, I believe, the Fireſhip blew up.

Q. You have ſaid in your Depoſition, That the *Marlborough* was not aſſiſted by any of thoſe Four Ships:—How do you know, that ſhe was not?

A. I ſay in my Depoſition, I did not obſerve any Ship bear down to aſſiſt her, before I went down to my Quarters.

Q. Where were they then?

A. To Windward.

Q. What time was that?

A. As ſoon as the Engagement began.

Q. What Reaſon have you to think they could have aſſiſted her?

A. Becauſe they were to Windward.

Q. Did you not come upon Deck, after you went down to your Quarters?

A. No; not till the Engagement was over.

Q. Did you ſee the *Rupert*, when you looked out at the Fireſhip, when ſhe blew up?

A. No; I can't ſay I did.

Q. Did you ſee the *Rupert*, when the Admiral wore?

A. No; I was at my Quarters all the time.

Then he withdrew.

Lieutenant *Vincent Pearſe*, of the *Neptune*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 66.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. Did you ſee the *Rupert*, when ſhe hauled up, after the Admiral began to engage?

A. Yes.

Q. Was ſhe in a Line with the Admiral?

A. When the Admiral engaged?— No, I don't think ſhe was.

Q. What was ſhe doing, when the Admiral engaged?

A. I believe, ſhe engaged ſoon after the Admiral began to engage:— I ſaw the Ships ahead of us fire; but at what time they began, I am not poſitive.

Q. Did you ſee her Shot: Was ſhe within point-blank Shot of the Enemy, when ſhe fired?

A. No.

Q. Did you ſee the *Marlborough*, when ſhe loſt her Maſts?

A. Not at the time ſhe loſt her Maſts: I ſaw her before and after.

Q. Did you ſee the *Rupert*, or any of thoſe Four Ships, go to her Aſſiſtance?

A. I did not ſee any of them do it.

Q. Your Depoſition ſays, They did not.

A. My Depoſition ſays, They might have done it.

Q. Did you ſee the Fireſhip, when ſhe bore down?

A. Yes; I ſaw her go down.

Q. Did you ſee any Ship go down to cover her?

A. No.

Q. You ſay, The *Rupert* was to Windward of the Line, when the Admiral firſt brought to?

A. She was not in a Line with Mr. *Mathews*.

Q. Was ſhe to Windward, or to Leeward?

A. She was to the Eaſtward of the Line, when the Admiral was engaged.

Q. Was that to Windward, or to Leeward?

A. To Windward.

Q. Did you ſee any Accident that had happened to the *Rupert*, to prevent her getting down into her Station?

A. No; I did not ſee any.

Q. At what Diſtance was you from the *Rupert*, when the Engagement began?

A. About Three Miles.

Q. At that Diſtance could you diſtinguiſh, whether ſhe was in a Line or not?

A. Yes; to be ſure, I could diſtinguiſh whether Ships were right ahead of me, or upon our Bow.

Q. Do you remember when the *Namur* hauled off from the *Real*?

A. I ſaw her haul off; but I can't ſay, at what particular Time.

Q. Did you ſee the *Rupert* at that time? Was ſhe to Leeward of the Admiral, or not, after he had hauled off?

A. I can't tell.

Q. In what Poſition were our Four Ships aſtern, when the *Namur* hauled off?

A. I can't tell.

Q. Could you diſtinguiſh the *Rupert* from the other Ships, when the Admiral had hauled off?

A. I did not obſerve her particularly, at that time.

Aſked by the Priſoner,

Q. I would aſk you, when the Admiral bore away to engage the *Real*, did he not put the Ships aſtern into ſome Confuſion and Diſorder?

A. I was at ſo great a Diſtance, I could not obſerve that.

Q. When he bore away, and brought up, did you ſee the *Rupert* haul up at the ſame time, or did ſhe continue to get into a Line?

A. I don't remember, that I ſaw her ſhorten Sail; nor did I ſee her bring to.

Q. When you wore in the Evening, Did you ſee no Ships engaging the *Spaniſh* Ships aſtern?

A. Yes; after we had wore.

Q. But, juſt before you wore, did you not ſee ſome Ships engaging them?

A. I can't tell; I don't recollect, that I did.

Q. Did you fire a Broadſide from your Ship, at the Enemy?

A. Yes.

Q. How far might the Ship you fired at, be from you?

A. Out of Gun-ſhot.

Q. How did ſhe bear from you?

A. Before our Beam.

Q. You ſay, We were to Windward of you: Recollect how you had the Wind, and the Courſe you ſteered; and, if you had hauled your Wind, whether all our Ships would not have been to Leeward of you?

A. The Wind was Eaſt-by-South, when you engaged: We always ſteered for the *Marlborough*.

Q. I aſk, whether, if you had hauled your Wind in the ſame Line with the Admiral, you would not have had every Ship to Leeward of you?

A. I

A. I don't well underſtand the Queſtion.

Court.

Q. I ſuppoſe, By what you ſaid of being to Windward, you mean that the Four Ships were to Windward of Admiral *Mathews?*

A. Yes; and upon our Larboard-Bow.

Priſoner. He miſtakes the Queſtion.

Priſoner asked,

Q. Pray recollect, and anſwer the Queſtion:—If you had hauled the Wind, as Admiral *Mathews* did, and laid the Courſe he did, would you not have been to Windward of our Four Ships aſtern of the *Marlborough?*

A. Thoſe Four Ships were to the Eaſtward of us.

Then he withdrew.

Iſaac Chapman, Maſter of the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 67.): And he declared the ſame to be true.

Q. You ſay, The *Rupert* hauled up to Windward of the Admiral?

A. Yes; ſhe was to Windward of the Admiral.

Q. Did you ſee her fire?

A. I ſaw her fire, I think, about Three o'Clock.

Q. Was ſhe within Point-Blank of the Enemy, when you ſaw her fire?

A. No.

Q. How do you know ſhe was not within Point-blank?

A. I was a very good Judge of the Diſtance, becauſe I ſaw the Shot fall ſhort, both from her and the Enemy, during the Firſt Part of the Engagement; but towards the latter Part, I believe, the Shot might reach.

Q. What Ship did ſhe engage?

A. I apprehend, the headmoſt Ship, at firſt.

Q. What time was that?

A. About Three o'Clock.

Q. What do you call the headmoſt Ship?—Do you mean that ſhe engaged the *Hercules?*

A. No; the headmoſt of the Four Ships coming up; and, I believe, afterwards the other Ships, as they neared her, fired at her alſo.

Q. Was ſhe within Point-blank, during any Part of that Time?

A. I believe, ſhe was not.—I can't ſay ſhe was, at any time of the Day.

Q. Were there Four, or Five, *Spaniſh* Ships aſtern coming up?

A. I can't account for more than Four.

Q. Did you ſee the *Marlborough*, when ſhe loſt her Maſts?

A. Yes.

Q. How far was the headmoſt of thoſe Four *Spaniſh* Ships ſhot up with the *Rupert*, about Three o'Clock?

A. I believe ſhe was then abaft her Beam.

Q. How long did you obſerve the *Rupert* continue Firing at thoſe Ships?

A. There was Firing, I believe, till about Five o'Clock.

Q. Did the Second of thoſe Ships alſo fire at the *Rupert?*

A. I believe, ſhe did.

Q. How far do you think the headmoſt of thoſe *Spaniſh* Ships got up to the *Rupert?*

A. I believe, the headmoſt might get up ſo far, as to be abreaſt of the *Rupert*'s Beam.

Q. Did any of them go ahead of her?

A. I can't ſay that: To the beſt of my Judgment, they did not get ahead of her.

Q. How far was you from the *Rupert?*

A. About Three Miles.

Q. When you obſerved the *Rupert* to fire at thoſe Four Ships, Did you obſerve them to ſhorten Sail, or bear away, on account of her Fire?

A. When we fired at the ſternmoſt of them, they then ſeemed to edge away; but the Reaſon of it ſeemed to be, to get near their Admiral, to ſuccour him, the Fireſhip being then bearing down upon him.

Q. When our Fleet wore, in the Evening, Did not thoſe Five Sail of *Spaniſh* Ships aſtern, receive the Fire of all our Ships aſtern of the *Namur?*—Did not the *Barfleur*, *Chicheſter*, and the reſt of them, fire upon the Enemy?

A. I can't account for that; I can't ſay whether they did, or not.

Q. Did the *Rupert* go down, upon the *Marlborough*'s loſing her Maſts, to give her Aſſiſtance?

A. No; ſhe did not.

Q. Did you ſee the Fireſhip go down upon the *Real?*

A. Yes.

Q. Did you ſee the *Rupert* then go down to cover her?

A. No.

Q. Did you ſee the Fleet next Morning?

A. Yes.

Q. Did you obſerve any *Spaniſh* Ships taken in Tow?

A. In the Evening, I ſaw the *Real* in Tow, every Top-maſt ſhe had being ſtruck down.

Q. Was this the Evening of the Engagement?

A. No; the Evening after.

Q. Did you obſerve any other *Spaniſh* Ships diſabled?

A. Yes; Three or Four; but I can't particularly deſcribe what Ships they were, or in what manner diſabled.

Q. Did you obſerve, whether any of the Five *Spaniſh* Ships aſtern were diſabled?

A. I can't ſay, that I did.

Aſked by the Priſoner,

Q. Do you know, that I was not within Point-blank?

A. I am well aſſured, that you was not; that is, before the Admiral wore: But what you was afterwards, I won't anſwer.

Q. Have you not been at *Sheerneſs*, and looked out there?

A. Yes.

Q. Have you not ſeen Two Ships from thence, at the *Nore*, Three Miles off, who have appeared at *Sheerneſs* to be at a great Diſtance from each other; and, when you came near, you have found them to be only at a proper Diſtance, to be clear of each other?—Speak like a Man of Honour.

Witneſs. I will, as near as I can, ſpeak the Truth.

Q. Won't Ships, at a great Diſtance, appear to be farther from each other, than they are found to be, when you come nearer to them?

A. I can't ſay but it may be ſo: But I am pretty certain as to the Diſtance; for I plainly ſaw you were at too great a Diſtance, becauſe I ſaw the Shot fall between you and the Enemy:—But Ships may appear at a greater Diſtance from each other than they really are.

Q. Could you, from *Sheerneſs*, ſee a Shot fall at the *Nore?*

A. Yes; very plain.

Q. Don't you think, a whole Broadſide fired at the Enemy might fall ſhort, tho' engaged within a Cable's Length, conſidering the large Swell we then had?

A. Yes; I am ſenſible it might be ſo, upon the Roll of a Ship.

Q. How did I bear from you?

A. I did not ſet you by the Compaſs: You was upon our Larboard-Bow, open with our Cathead.

Q. How did you ſteer then?

A. For the Admiral; and he was then near right ahead, or rather inclining to our Weather-Bow.

Q. Was you not to Windward of Admiral *Mathews*'s Diviſion?

A. Yes; the Rear was to Windward of the Centre; we were aſtern of him.

Q. I will explain this: If the Wind is North-Eaſt, and Mr. *Mathews* bears from you South-Weſt, would you not be to Windward of Mr. *Mathews*'s Diviſion?

A. At the time Admiral *Mathews* began to engage, the Wind was Eaſt-North-Eaſt, or Eaſt-by-North: About Four o'Clock, the Wind ſhifted to the North; and, therefore, as the Wind ſhifted, we were then to Windward.

Q. Then, as you ſteered athwart, Could you be a good Judge at Three Miles Diſtance, that I was not in a Line with Admiral *Mathews?*

A. Yes; I am a very good Judge of that, becauſe you could not be in a Line with Admiral *Mathews*, without being as near the Enemy as he was.

Q. Did I haul up, when the Engagement began, or bear down?

A. I believe, you kept the ſame Courſe, from the Beginning to the End of the Action: I did not ſee you bear down, or haul off.

Q. What Ship did the *Neptune* fire at, the Sternmoſt, Headmoſt, Second, or Third?

A. At the Sternmoſt.

Q. How did ſhe then bear from you?

A. Rather, before our Beam.——We were obliged to breech our Guns aft, to fire at her.

Q. Then, as I was Three Miles from you, none of them could be abreaſt of me then?

A. The Firſt of thoſe Ships was a great Way ahead of the *Iſabella*, and might be near you in the Evening.

Q. Did you think any of thoſe Ships had paſſed me, when you fired at the ſternmoſt?

A. I believe the headmoſt might be about abreaſt of you, at that time.

Q. Did you ſee no Ship engaging them Ships, when you fired?

A. I can't be particular: Juſt at the time we were firing ourſelves.

Q. Had I any Ship to engage with properly, before thoſe Ships came up?

A. I apprehend, not.

Then he withdrew.

Edward Pike, Maſter's Mate of the *Neptune*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 68.): And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Seventh Gun, on the Upper-deck.

Q. Did you ſee the *Rupert*, when ſhe firſt brought up, after the Admiral began to engage?

A. She brought to, before the Admiral began to engage, and to Windward of him.

Q. Did you ſee the *Rupert* fire?

A. Some time in the Afternoon, about the time the Fireſhip was bearing down, the *Spaniſh* Ships aſtern made Sail up; and then the Ships aſtern of the *Marlborough* fired at them.

Q. Was the *Rupert* within point-blank Shot of the Enemy?

A. No.

Q. Did you ſee the *Marlborough*, when ſhe loſt her Maſts?

A. Yes.

Q. Did the *Rupert* then bear down, to give her any Aſſiſtance?

A. I never obſerved her to do ſo.

Q. Did you ſee the Fireſhip bear down?

A. I ſaw her bear down, and blow up.

Q. Did you ſee the *Rupert*, or any other Ship, bear down to cover her?

A. Not One:—I did not ſee any Ship bear down with her.

Q. Did the *Rupert* ever go ſo near the Enemy, as to do proper Execution, from the Beginning of the Engagement, till the Admiral wore in the Evening?

A. I

A. I never obſerved her to be within point-blank Shot, or near enough to do Execution, till after the Admiral wore.

Aſked by the Priſoner,

Q. What Diſtance was you from the *Rupert*, when the Admiral firſt began to engage?

A. I can't be certain as to Diſtance; I believe, about Two, or between Two and Three Miles.

Q. You ſay, The *Rupert* did not fire within Point-blank, or near enough to do Execution; Were there any other Ships firing at the ſame time the *Rupert* did?

A. I believe, the *Royal Oak*, and the Ships ahead, were firing at the ſame time, as I judged, by the Smoke that came from them.

Q. How can you then tell, that the *Rupert*'s Shot, in particular, fell ſhort?

A. I don't undertake to ſay, it was the *Rupert*'s, particularly; but I never obſerved the Shot from any of thoſe Ships to go home.

Q. Did you ever obſerve thoſe Five *Spaniſh* Ships to paſs the *Rupert*, or any of the other Ships?

A. I never did obſerve them to paſs the *Rupert*, before the Admiral wore.

Q. If the *Rupert* had bore down, and brought to in a Line, Was there a proper Ship for her to engage, before ſhe fired, when you ſaw her fire at thoſe Ships?

A. I don't know, that there was any Ship for her to engage, till the ſternmoſt *Spaniſh* Ships came up.

Q. Were there Four or Five *Spaniſh* Ships coming up?

A. I never obſerved more than Four, beſides the Ship near aſtern of the *Real*.

Q. Did not Mr. *Leſtock* fire a Broadſide at one of the Enemy's Ships?

A. Yes.

Q. At what Ship was it?

A. At the ſternmoſt of the Four.

Q. How did ſhe then bear from you?

A. To the beſt of my Knowlege, upon our Beam, or rather a little before it, if any thing.

Q. Do you think, that the Ship you fired at, could have fired at the *Royal Oak*, and have hit her?

Witneſs. What, at the time we fired at her?

Priſoner. Yes.

A. No;—I believe not.

Then he withdrew.

Lieutenant *James Munro*, late Mate of the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 69.): And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Braces.

Q. What time was it, that you ſaw the *Rupert*, after the Admiral began to engage?

A. When I obſerved the *Rupert*, I ſaw the Four ſternmoſt Ships, and did not obſerve her particularly.

Q. What time did you ſee them?

A. After the *Marlborough* loſt her Maſts: I did not take any notice of them before.

Q. Did you not ſee her before?

A. I might have ſeen her; but I can't give any Account of her: I ſaw her when the Admiral and *Marlborough* bore down.

Q. Did you not ſee the *Rupert* to Windward of the *Marlborough* at that time?

A. She ſeemed to be conſiderably to Windward of the *Marlborough*; I did not obſerve her particularly; they all Four appeared to be ſo.

Q. Did you ſee the Admiral bear down?

A. Yes; and I then obſerved the Four Ships aſtern were conſiderably to Windward of the *Marlborough:* They were upon our Weather-Bow, and the *Marlborough* was right ahead; and there was a great Opening between thoſe Ships and the *Marlborough*.

Q. You ſay, You did not obſerve the *Rupert* in particular?

A. I did not obſerve her in particular; they were all Four ſo.

Q. Did you ſee the *Marlborough* loſe her Maſts?

A. Yes; I ſaw her, when ſhe was diſmaſted: I ſaw her Maſts drop over the Side.

Q. Did you obſerve the *Rupert*, or any of the Four Ships, go to her Aſſiſtance?

A. No.

Q. Did you ſee the Fireſhip, before ſhe blew up?

A. Yes.

Q. Did you ſee her go down to the *Real*?

A. Yes.

Q. Did you ſee the *Rupert*, or any of the Four Ships go down to cover her?

A. No.

Q. When you obſerved the *Rupert* Firing, Do you think ſhe was within Point-blank?

A. I don't think ſhe was, at the time I ſaw her; I did not take notice of the *Rupert* in particular; but I don't think any of the Four were within point-blank Shot:— I am ſure, She was not.

Q. When did you ſee thoſe Four Ships fire?

A. Between Two and Three o'Clock, or about Three, I am not poſitive.

Q. Did you obſerve any of thoſe Ships, the whole time before Wearing, to be nigh enough to the Enemy, to do proper Execution?

A. I did not obſerve them to be ſo nigh to the Enemy, within that time, as to be able to do proper Execution.

Q. Was the *Rupert* ſo near to the Enemy, as the *Royal Oak* was?

A. I ſaid before, I did not obſerve the *Rupert* in particular;—I did not diſtinguiſh one from the other.

Q. Was it in the Power of thoſe Four Ships, to have gone near enough to do Execution?

A. Yes; I think it was very much in their Power.

Q. Do you know whether the *Rupert* ever was in the Line, or to Windward or Leeward of the Line, before the Admiral wore?

A. If you take the Line from the *Marlborough*, ſhe was conſiderably to Windward of it; but if from the *Namur*, I can't ſay, whether ſhe was in the Line, or not.

Q. Did you obſerve any of the *Spaniſh* Ships coming up to their Admiral, to bear away, or ſhorten Sail, on account of the Fire of any of our Ships?

A. No; I did not obſerve it.

Priſoner aſked,

Q. What Diſtance was you from the *Rupert?*

A. I take it, about Three Miles, as near as I can gueſs.

Q. Did you fire at any of the ſternmoſt *Spaniſh* Ships?

A. Yes; we fired at the ſternmoſt Ship.

Q. How did ſhe bear from you then?

A. I can't tell the Point of the Compaſs; but ſhe was rather before our Beam.

Q. Do you think, that a Shot from that Ship could ſtrike the *Royal Oak*, which was ahead of you?

A. I don't believe it could, at the time we fired.

Q. At what o'Clock did you fire?

A. About Four o'Clock.

Q. Did you then immediately wear, or tack your Ship?

A. No, we ſtood on for the *Marlborough*, to the beſt of my Remembrance.

Q. Did any of thoſe Four Ships ever paſs the *Rupert*, or get the *Rupert*'s Length before Wearing?

A. Yes; I believe they did paſs the *Rupert.*

Q. Did all the Four paſs her?

A. I can't ſay, whether they all paſſed the *Rupert*; but I am pretty ſure the headmoſt did.

Q. By what time?

A. Before Five o'Clock;—before the Fleet wore.

Q. Did you obſerve, whether I endeavoured to near them, or haul off?

A. I can't ſay; I did not obſerve the *Rupert* in particular, as I told you before.

Q. When the Fireſhip blew up, Did you ſee no Ship engaging thoſe Ships?

A. There was a Firing; but I can't call it Engaging; I did not ſee any Ship go to her Aſſiſtance.

Q. I am not aſking that; I ſay, When the Fireſhip blew up, and you ſaw the Four Ships which you had fired at, Did you ſee any Ship firing at the Headmoſt of them?

A. I did not obſerve.

Q. When the Fireſhip blew up, Was there any Firing at all?

A. I did not obſerve any: The Firing I obſerved, was juſt after the *Marlborough* was diſmaſted.

Q. Then you did not obſerve them fire afterwards?

A. I might ſee them afterwards, but not to obſerve them particularly:— There might be Firing, when the Fireſhip blew up; but I did not obſerve it.

Q. Do you think, that an *Engliſh* Ship might not be ahead intermixed with thoſe Four *Spaniſh* Ships, and you not take her for a *Spaniſh* Ship? —Whether ſhe might not be ahead of thoſe Ships, and in a Line with them; and, in the Confuſion, you might not miſtake her?

A. I can't ſay it's impoſſible; but I think it very improbable.

Then he withdrew.

Charles Stuart, Midſhipman of the *Neptune*, called in, and ſworn.

His Depoſition was read (as in Captain *Buriſh*'s Tryal, Page 70.): And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Braces.

Q. Did you ſee the *Rupert*; when ſhe firſt hauled up, after the Admiral began to engage?

A. I did not then obſerve her Hauling up.

Q. When did you ſee her?

A. I ſaw her from Two o'Clock till Four; I did not ſee her in particular: I obſerved the Four Ships ſtationed aſtern of the *Marlborough*, of which, by the Line of Battle, ſhe was one; and was the next Ship ahead of the *Royal Oak.*

Q. Did they keep the Line?

A. They kept to Windward of the *Marlborough*, during the time I ſaw them.

Q. Did you ſee the *Rupert* fire?

A. Yes.

Q. At what time?

A. About Three o'Clock:—I don't know, when the *Rupert* began; but I obſerved her to be Firing at that time.

Q. Did you ſee all the Four Ships fire?

A. Yes.

Q. Was ſhe within point-blank Shot of the Enemy?

A. No, not then.

Q. You ſay, You did not ſee the *Rupert* within point-blank Shot then; Did you ever ſee her at any other time of the Day within Point-blank?

A. I can't ſay what ſhe was after Four o'Clock, when I went off the Deck; ſhe might be nearer afterwards.

Q. Was ſhe ever within Point-blank, when you ſaw her?

A. No; I did not ſee her within Point-blank.

Q. Did you ſee the *Marlborough*, when ſhe loſt her Maſts?

A. Yes; I ſaw the *Marlborough* loſe her Maſts.

Q. Did you ſee the *Rupert* go down to give her Aſſiſtance?

A. No;

A. No; ſhe was then aſtern, and to Windward of the *Marlborough.*

Q. Did you ſee the Fireſhip, when ſhe went down to burn the *Real?*

A. Yes.

Q. Did you ſee the *Rupert* go down to cover her?

A. I did not ſee any Ship go down.

Q. About Four o'Clock, when you ſaw her fire, What Ship did you obſerve her fire at?

A. I don't remember, that I ſaw her firing at Four o'Clock. I ſaw her firing at Three.

Q. What Ship did you obſerve her fire at?

A. I don't know what Ship ſhe pointed her Guns at; but I ſaw the Shot fall ſhort.

Q. Was there any Ship for her to fire at?

A. There were ſome Ships aſtern; and I ſuppoſe ſhe was firing at them.

Q. How many *Spaniſh* Ships were there coming up?

A. There were Four Sail.

Q. Were they all the Ships, that were aſtern of the *Real?*

A. No; there was her Second, which was up with her.

Aſked by the Priſoner,

Q. Did you not ſee me before Two o'Clock?

A. No; I did not.

Q. Then you can't tell, whether I was in a Line with the Admiral, or not?

A. I can't tell:—It is the *Marlborough* I ſpeak of.

Q. Might the *Rupert*, at any time in the Afternoon, be within point-blank Shot, or near enough to do proper Execution; and you not obſerve it?

A. Not before Half an Hour paſt Three; what ſhe might be afterwards, I can't ſay; I did not obſerve much.

Q. Was there any Ship for the *Rupert* to engage with, before the ſternmoſt *Spaniſh* Ships came up?

A. I believe, there was no Ship then; but if ſhe had bore down nearer, ſhe might have engaged thoſe Ships ſooner: But I can't ſay, there was any Ship for her to engage, before they came up.

Q. Did thoſe Ships ever paſs the *Rupert?*

A. I believe, ſome of them did; but I don't believe, they all paſſed her.

Q. Do you mean, before Wearing?

A. Yes: I believe the headmoſt of them did, before Wearing; for they joined their Admiral before we wore.

Q. How far might you be diſtant from the *Rupert?*

A. When I ſaw you, it might be above Three Miles, to the beſt of my Knowlege; but I can't be ſure.

Q. At what time, do you mean?

A. About Three o'Clock; when I ſaw you Firing.

Then he withdrew.

Lieutenant *Edward Clarke*, late Midſhipman of the *Neptune*, called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 71.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Quarter-deck, to paſs the Word.

A. Acquaint the Court what you know of the *Rupert*, in that Day's Engagement.

A. I know, that none of the Four Ships, aſtern of the *Marlborough*, went down equally with the *Namur* and *Marlborough*, to engage; and that they, for the greateſt Part of the Afternoon, whenever I obſerved them, did not bear down near enough to engage, but fired at a great Diſtance.

Q. Were they within Point-blank?

A. No: I obſerved them, from time to time, all the Afternoon; and they never bore down near enough to engage.

Q. What Ships did they fire at?

A. The Ships aſtern of the *Real*; but they were at a great Diſtance; and I obſerved the Shot fall ſhort on both Sides.

Q. Did you obſerve the Actions of the *Rupert*, diſtinctly from the reſt?

A. No, I did not diſtinguiſh her particularly from the reſt of the Ships: But I remember to have ſeen the *Royal Oak* and *Rupert*, in the Afternoon; and the *Royal Oak* was to Leeward of the *Rupert.*

Q. What Obſervations did you make of thoſe Two Ships?

A. Only that the *Royal Oak* was to Leeward of the *Rupert.*

Q. Did you obſerve the *Marlborough*, when ſhe loſt her Maſts?

A. I ſaw her juſt after.

Q. Did you ſee the *Rupert*, or any other Ship, go down to her Aſſiſtance?

A. I ſaw no Ship go down to her Aſſiſtance.

Q. Did you ſee the Fireſhip go down?

A. Yes; and I ſaw her blow up.

Q. Did you ſee no Ship go down to cover her?

A. No: No Ship was nearer to the *Real* than the *Marlborough*, at that time.

Q. Did you ever obſerve any of thoſe Four Ships, aſtern of the *Marlborough*, near enough to the Enemy, during any Part of the Action, to do Execution?

A. No, I never did.

Q. Did you ever obſerve any of the *Spaniſh* Ships edge away, or ſhorten Sail, on account of the Fire of any of our Ships?

A. I believe, I ſaw one Ship in the Afternoon edge away, with her Fore-top-gallant Sheet flying.

Q. I mean, Did you ſee any of thoſe Four Ships of the Enemy ſhorten Sail, or edge away, to get from our Ships?

A. They were not close-hauled; but steered away directly for their Admiral.—They were under an easy Sail most Part of the Afternoon.

Q. Did you never see any one of our Four Ships yaw, and bring her Starboard, and sometimes her Larboard Broadside, upon the Enemy, and fire at them?

A. No, I did not.

Q. Do you think, if a Thing so particular had been done, that you must not have observed it?

A. Yes, I believe I must, if she had made so remarkable a Yaw.

Asked by the Prisoner,

Q. Had you your Eye fixed on me, from the Beginning to the End of the Engagement?

A. No.

Q. Do you believe, it might not be possible for the *Rupert* to yaw, and lay her Sails aback; and you not see her?

A. I think, if she had so remarkably yaw'd, as to bring both Sides to bear upon the Enemy, I must have observed it.

Q. What Distance might you have been from the *Rupert*?

A. It is difficult to determine the Distance from every particular Ship; but, I believe, about Three or Four Miles.

Q. Can you be positive, when Two Ships are engaging, at Three or Four Miles Distance from you, that you can determine their Distance from each other?

A. Yes; when I see their Shot fall short.

Then he withdrew.

Stephen Jenkins, Midshipman of the *Neptune*, called.

Prisoner. I desire that this Witness may be sworn, Whether he is to gain or lose by the Decision of this Tryal, before he is admitted as a Witness against me.

The Court asked the Prisoner,

If he knew of any Interest this Witness had in the Event; or if he had anybody to prove, That the Witness had an Interest in it; or a Wager depending upon it: But, the Prisoner not offering to prove it, but only desiring that the Question might be put to him, Whether he had any Interest in it, or not; the Court told him, He might ask That himself afterwards; and ordered Mr. *Jenkins* to be sworn.

Then Mr. *Jenkins* was sworn.

And his Deposition read (as in Captain *Burrish*'s Tryal, Page 72.): And he declared the same to be true.

Q. Where was you quartered?

A. At the Braces.

Q. Acquaint the Court what you know of the *Rupert*'s Behaviour, during the Action.

A. I know no more than is contained in my Deposition.

Q. Was she in a Line with the Admiral?

A. No, I don't think she was.

Q. Did you see her, from the Beginning of the Engagement, till the Admiral wore?

A. I saw her at several different times: During that Time, I don't think, that any of the Four were at any time in the Line.

Q. Did you see the *Rupert* fire?

A. I saw all the Four Ships astern of the *Marlborough* fire, but, at a great Distance:—I saw their Shot fall short.

Q. Were they within Point-blank?

A. No.

Q. What Ships did they fire at?

A. I can't say; but, I believe, at the Four *Spanish* Ships coming up.—I believe it could be at no others.

Q. Did you see the *Marlborough*, when she lost her Masts?

A. I saw her soon after.

Q. Did the *Rupert* go down to her Assistance?

A. I did not see any Ship go down to her Assistance.

Q. When you saw the Ships astern of the *Marlborough* fire, Were they near enough to do Execution?

A. No, I believe not: I saw their Shot make Ducks and Drakes in the Water.

Q. Did you see any of those Ships go to the Assistance of the *Marlborough*, after she lost her Masts?

A. No, I did not.

Q. Did you take notice when the *Royal Oak* and *Rupert* fired at the Enemy?

A. I did not take any particular Notice of the *Rupert*.

Q. Did you see the Fireship bear down?

A. Yes.

Q. Did any of those Four Ships bear down to cover her?

A. No; I did not observe any of them do it.

Asked by the Prisoner,

Q. What Distance was you from the *Rupert*?

A. I can't judge of the Distance, it is so long since; but, I believe, it might be Two Miles and an half, or Three Miles.

Q. What time did you fire a Broadside at the sternmost Ship of the Enemy?

A. I can't remember the Time; and I have not my Journal: But we did fire a Broadside.

Q. Pray, Were all those Four Ships of ours, the *Dorsetshire*, *Essex*, *Rupert*, and *Royal Oak*, firing at the same time, when you saw them?

A. It is impossible to tell—I saw Smoke and Fire.

Q. Are you positive it was the *Rupert*'s Shot made Ducks and Drakes in the Water?

A. I can't be positive, as to the *Rupert* in particular—I observed it of all the Four Ships.

Q. Do you believe, that any one of those Four Ships might not be firing, and you not perceive it?

A. Yes, poſſibly it might be ſo: The Headmoſt and Sternmoſt might fire, and the Middlemoſt not; and yet I not perceive it.

Then he withdrew.

John Burges, Midſhipman of the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 73.): And he declared the ſame to be true.

Q. Where was you quartered?

A. In the Main-top.

Q. I think you was upon the Main-top-gallant Yard.

A. Yes, I was.

Q. Did you obſerve the *Rupert*, at any time, yaw, ſo as to bring ſometimes her Starboard Guns, and ſometimes her Larboard, to bear upon the Enemy?

A. No; I never obſerved any ſuch thing.

Q. Did you obſerve her during the greateſt Part of the Engagement?

A. I ſaw her all the Time I was upon the Main-top-gallant Yard; and ſhe was firing moſt of the Time I was there; which was, till after the *Marlborough* loſt her Maſts: I ſaw her Maſts go, from thence.

Q. Did you obſerve her afterwards?

A. I was ſoon after ordered down, with Sixteen of my People, to aſſiſt at the Guns upon the Main-deck, in caſe we ſhould come to Action; and I did not particularly obſerve any Ship afterwards, till I went upon the Forecaſtle, to ſee the Fireſhip bear down, juſt before ſhe blew up; and from thence I ſaw her blow up; at which time, not one of the *Britiſh* Ships was firing, that I obſerved.

Q. Was the *Rupert* ever ſo near the Enemy, during the time you ſaw her, as to do Execution?

A. No; not during the Time I ſaw her from the Main-top-gallant Yard: I believe, ſhe might, when ſhe wore.

Q. Was ſhe in a Line with the *Marlborough* or *Namur*?

A. No.

Q. Did you ſee the *Marlborough*, when her Maſts were gone?

A. Yes.

Q. Did not the *Rupert* bear down to aſſiſt her?

A. No.

Q. Did you ever obſerve the *Rupert* to back her Sails; or uſe any Means to get nearer the Enemy?

A. No; I did not obſerve any thing of her backing her Sails; or that ſhe uſed any Means to get nearer the Enemy.

Q. Did you ever obſerve the *Royal Oak* to haul on board her Fore-tack, and haul to Windward of the *Rupert*?

A. No; I never obſerved her to haul on board her Fore-tack.

Q. Did you ever obſerve the *Royal Oak* to Windward of the *Rupert*?

A. She was never to Windward of the *Rupert*, during my Obſervation of her from the Main-top-gallant Yard:—I don't know what ſhe was afterwards.

Q. When you came off the Main-top-gallant Yard, Had any of the *Spaniſh* Ships ſhot up abreaſt of the *Rupert*?

A. I can't ſay: I believe the headmoſt might be abreaſt of her; but I can't be certain of that, as we were aſtern: I can't judge ſo well as the People on board her.—They were firing then; but I am not a Judge, whether any of them were abreaſt of her, or not.

Q. Did you obſerve any Ship cover the Fireſhip?

A. I did not obſerve any Ship cover the Fireſhip:—At the time I obſerved her, ſhe was pretty near the *Real*; and there was not a Shot then firing from any Ship of the *Britiſh* Fleet.

Q. Were they all ſilent then?

A. I did not ſee a Gun then fired.

Priſoner aſked,

Q. How far diſtant might you be from the *Rupert*, when you obſerved her?

A. Judging of Diſtances is uncertain; I believe the Admiral was between Six and Seven Miles from us; but, I don't know the Diſtance he was from the Ships aſtern; but, I believe, the Admiral was between Six and Seven Miles from us, at the Beginning of the Action, and you about Four.

Q. You ſay, You did not ſee any thing of the *Rupert*, after the *Marlborough* loſt her Maſts?

A. Not till I went upon the Forecaſtle, to ſee the *Anne Galley* Fireſhip bear down:—From the Time I came down from the Main-top-gallant Yard, till I went down upon the Forecaſtle, I did not ſee the *Rupert* at all.

Q. What Diſtance of Time was there between your coming off the Main-top-gallant Yard, and the Fireſhip's bearing down?

A. Better than an Hour: I came off the Yard about Three o'Clock; and I ſaw the Fireſhip between Four and Five. I know nothing of your Ship, in that Space of Time.

Q. How long, before the *Marlborough*'s Maſts were gone, did you ſee the *Rupert*; or did you ſee her particularly fire?

A. I did not obſerve her particularly.—I ſaw all the Four Ships fire, the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*; and they all appeared to me, at too great a Diſtance.

Q. Did they all begin to fire with the Admiral, and continue till the *Marlborough* loſt her Maſts?

A. I think the *Royal Oak* began to fire before the *Rupert*; and the *Rupert* fired about Two o'Clock, or thereabouts; about Half an Hour after the Admiral did.

Q. What Ships did you obſerve the *Rupert* and *Royal Oak* to fire at?

A. I think, at the Headmoſt of the Four *Spaniſh* Ships that were coming up.

Q. Did you fire at the Sternmoſt of thoſe Ships?

A. Yes.

Q. Then we fired at the Headmoſt, and you fired at the Sternmoſt; and you was Four Miles diſtant; then thoſe Four Sail muſt reach Four Miles.

A. I don't know that: We were nearer to you, when we fired at the ſternmoſt Ship.

Q. Do you think the Shot of the ſternmoſt Ship, that you fired at, could reach the *Royal Oak?*

A. I don't think it could.

Q. Do you think, before the Admiral wore, that the ſternmoſt Ship was got ſo far ahead, that her Shot could reach the *Royal Oak?*

A. I believe not—I can't ſay what a random Shot will do; for that will reach a great Way.

Q. Do you remember,—Was the *Rupert* engaged, when the Shot was fired from your Ship, at the *Dunkirk* and *Cambridge*, to bear down?

A. I don't know; for it was after I came down from the Main-top-gallant Yard to the Main-deck:—I ſaid, I did not remember any thing of the *Rupert*, after the *Marlborough*'s Maſts were gone.

Q. Then it was after that Time that you fired at the *Dunkirk?*

A. Yes; that Shot was fired between Three and Four of Clock.

Q. When you wore, and ſtood to the Northward, or juſt before, Did you ſee no Ship engaging the *Spaniſh* Ships?

A. I don't remember ſeeing any Ships engaging, from the Time I mentioned, that I obſerved the Fireſhip, till after the Admiral wore.

Then he withdrew.

Lieutenant *James Orrok*, late Midſhipman of the *Neptune*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 75.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Quarter-deck.

Q. What time did you ſee the *Rupert*, after the Engagement began?

A. I don't remember to have ſeen the *Rupert* particularly; but I ſaw the Four Ships between our Diviſion and the *Marlborough* fire, between Two and Three o'Clock.

Q. You ſay, They were to Windward of the Line?

A. Yes, conſiderably.

Q. You ſaw them fire?

A. Yes.

Q. Were they within a proper Diſtance of the Enemy, for their Shot to do Execution?

A. No; for I ſaw many of their Shot fall ſhort.

Q. Could you diſtinguiſh the *Rupert* from the other Ships?

A. I could not know the *Rupert* particularly, but by her Station from the *Marlborough*.

Q. Did you obſerve the *Marlborough*, when her Maſts were gone?

A. Yes: I ſaw them go away.

Q. At that time did you obſerve the *Rupert?*

A. No; for I was looking out of the Starboard Gangway, and ſaw the *Marlborough:* But the *Rupert* and the other Ships were then to Windward.

Q. From that time, till the Admiral wore in the Evening, Did you obſerve the Motions of thoſe Four Ships?

A. Not all the time.—I ſaw them from time to time, at different times, till the Admiral wore.

Q. In any Part of that time, Did you obſerve the *Rupert*, or any of thoſe Four Ships, near enough the Enemy to do Execution with their Shot?

A. No; I did not.

Q. Did you ſee any Ship go down to the *Marlborough*, when her Maſts were gone?

A. No: I ſaw no Ship go down to the *Marlborough*.

Q. Nor to cover the Fireſhip?

A. No.

Q. Did you ever obſerve any of the Four *Spaniſh* Ships bear away, or ſhorten Sail, on account of any Fire they received from our Ships?

A. No: They made Sail, and continued their Courſe, to join their own Admiral.

Asked by the Priſoner,

Q. How far diſtant was you from the *Rupert?*

A. I can't judge of the Diſtance; but, in my Opinion, about Three Miles, when the Fireſhip bore down.

Q. You ſaw her then?

A. Yes.

Q. Did you ſee her blow up?

A. Yes; I ſaw her blow up.

Q. Did you ſee no Ships engaging the *Spaniſh* Ships then?

A. No: I did not ſee any.

Q. Did you ſee no Firing then?

A. Yes; ſome of the *Spaniſh* Ships were firing; but I did not ſee any *Britiſh* Ships firing at that time.

Q. What time did the *Rupert* begin to fire?

A. I can't tell the particular Time of her beginning: I ſaw Firing from all the Four Ships between Two and Three o'Clock.

Q. Are you ſure the *Rupert* was one of them?

A. I can't be particular: I think they were all firing; but if the Headmoſt and Sternmoſt were firing, I might not be able to diſtinguiſh whether the Middlemoſt were or not.

Q. How then do you know it was the *Rupert*'s Shot fell ſhort?

A. I am not particular as to the *Rupert*; I only ſay, that the Shot of the Four fell ſhort.

Q. What Ship did thoſe Four Ships fire at?

A. I believe, at the Two Headmoſt of the Four *Spaniſh* Ships that were ſeparated from their Centre; the Shot by their falling ſeemed to be levelled at thoſe Ships.

Q. Did the Four *Spaniſh* Ships come up in a cloſe Line together?

A. Yes, they came up cloſe together: They ſeemed to be only at a proper Diſtance.

Q. And did you fire at the Sternmoſt of them?

A. Yes.

Q. Then the *Dorſetſhire* fired at the Headmoſt, and you at the Sternmoſt; for you ſay all the Four Ships fired at the Two Headmoſt of thoſe Ships.

A. I don't know any other Ships they fired at.

Then he withdrew.

Henry Madox, Midſhipman of the *Neptune*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 82.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Forecaſtle.

Q. Did you ſee the *Rupert* fire upon the Enemy?

A. That Ship which was next to the *Dorſetſhire* did.

Court. That is the *Eſſex*:

Witneſs. I ſaw all the Four Ships fire.

Q. How did you know the *Rupert?*

A. By the Line of Battle.

Q. Did you ſee thoſe Four Ships fire at the Enemy?

A. Yes; I ſaw the Four Ships fire, and the Enemy fire at them; but their Shot fell ſhort between them, and made a Breach in the Water.

Q. Did you ſee the *Marlborough*'s Maſts go away?

A. Yes.

Q. Did you ſee the *Rupert*, or any of thoſe Four Ships, bear down to her Aſſiſtance?

A. No.

Q. Did you ſee the Fireſhip bear down?

A. Yes.

Q. Did the *Rupert*, or any other of thoſe Ships, bear down to cover her?

A. No.

Priſoner aſked,

Q. Whereabouts was the *Rupert* aſtern of the Admiral?

A. She was aſtern of the *Eſſex*, according to the Line of Battle.—I know no farther; I did not know the *Rupert* at that Diſtance, I aſſure you.

Q. What Diſtance might you be from the *Rupert?*

A. I can't judge; I can only gueſs at this Diſtance of Time.—I believe, about Four or Five Miles from the Admiral, and about Three from the *Rupert*.

Q. When the Fireſhip went down, Did you ſee any Ships at all firing?

A. The Fleet was engaging.

Q. Did you ſee the Four Ships engaging at that time?

A. It is ſo long ago, I can recollect but little of it.—I can't tell.

Q. Are you poſitive whether the *Rupert* was in a Line with the Admiral, or not?

A. I take it, that thoſe Four Sail were rather to Windward of the Line, and the Admiral; and conſequently ſhe muſt.

Q. Were the Admiral and *Marlborough* in the ſame Line together?

A. When they bore down, they were.

Q. I think you ſay in your Depoſition, That the *Marlborough*'s Maſts fell about Two o'Clock?

A. I can't ſay; I did not mind Time or Diſtances; I can't ſay any thing to it; I don't remember, it is ſo long ago.

Q. What Ships did the Four Ships aſtern of the *Marlborough* fire at?

A. At the Enemy's Ships aſtern of the *Real.*

Q. Was it the Four *Spaniſh* Ships coming up, or at the *Real*, or her Second?

A. I can't tell particularly what Ships they fired at.

Then he withdrew.

Captain *Gaſcoigne*, of the *Torbay*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 78.): And he declared the ſame to be true.

Q. Did you ſee the *Rupert* out of the Line, when ſhe engaged?

A. I did not ſee the *Rupert*, to know her to be the *Rupert*, the whole Day; becauſe, as I mentioned in former Tryals, my Ship went ſo ill, that I was obliged to keep my Spritſail ſet; which blinded me as to any thing ahead, that I did not even ſee the Admiral, till he bore down, and opened to Leeward of my Foreſail.

Q. Did you ſee the Four Ships ſtationed aſtern of the *Marlborough?*

A. I did not ſee them at all, for the ſame Reaſon.

Q. As they were to Windward, you might ſee them.

A. They did not bear down at all.

Q. Relate what you know of the Matter.

A. I ſaw the Admiral and *Marlborough* bear down, to begin the Attack; but the Four Ships, ſtationed next aſtern of the *Marlborough*, did not bear down, ſo as to be in a Line with them; for if they had, when I ſaw the *Namur* and *Marlborough* bear down before the Wind, between the Starboard Leech of my Headſails, and the Vice-Admiral's Ship, I muſt have ſeen them bear down alſo.

Q. Did you ſee the Admiral begin the Attack?

A. Yes.

A. Yes.

Q. Did you ſee the Four Ships then?

A. No: No Ships ſtationed aſtern of the *Marlborough* came open with the Leech of my Sails, while the Admiral was engaged; but I ſaw a Cloud of black Smoke, which came from Ships, either ahead or to Windward of me, and intercepted my View of the Admiral and *Marlborough* for a conſiderable time together.

Q. Were thoſe Ships, that you ſaw the Smoke come from, to Windward of the Admiral's Line?

A. To be ſure, or elſe I muſt have ſeen them, as I ſaw the *Marlborough* and Admiral.

Q. If the *Rupert*, or any one of the Four Ships, had been as cloſely engaged, with any of the Enemy's Ships, as the *Namur* and *Marlborough* were, Muſt you not have ſeen them?

A. Yes; certainly I muſt.

Q. Did you ever ſee thoſe Four Ships, which the Smoke came from, ſo near engaged with the Enemy, as to be within point-blank Shot?

A. No.

Q. Were they ſo near, as to do Execution?

A. I can't ſay, becauſe I did not ſee them; but I ſaw the Shot make a Breach in the Sea, between them and the Enemy.

Q. Did you ſee the *Marlborough*, when her Maſts went away?

A. Yes.

Q. Did you ſee any Ship bear down to aſſiſt her?

A. No.

Q. Nor to cover the Fireſhip?

A. No: No Ship bore down to cover her: —For from the time ſhe opened with the Lee-Leech of my Sails, my Eye was never off the Fireſhip, till ſhe blew up; and I expected every Inſtant ſome Ship ſhould have gone down to cover her.

Q. When ſhe opened to your Sails, had you a Sight of the *Marlborough?*

A. Yes.

Q. Did the Fireſhip open with your Sails, before ſhe got ſo far to Leeward as the *Marlborough?*

A. Yes; conſiderably before: I ſaw the *Marlborough* at the ſame time.

Q. Did you ever obſerve the *Hercules* to bear down, to aſſiſt the Four *Spaniſh* Ships coming up?

A, No; I did not ſee any of them bear away, till their Admiral bore away.

Q. Did you ſee the Four *Spaniſh* Ships bear down to their Admiral?

A. When the Fireſhip bore down, the *Spaniſh* Admiral put before the Wind, and they edged away after him.

Q. Did you ever ſee the *Hercules* leave their Admiral, and come to the Aſſiſtance of the Four *Spaniſh* Ships coming up?

A. No.

Q. Were the Four *Spaniſh* Ships to Windward of their Admiral, before he bore away?

A. Yes: They were to Windward; for they ſteered for their Admiral with the Wind Large; and when he bore away, they edged after him.

Q. Did the *Hercules* bear away with him?

A. I think ſo; for ſhe went with her Admiral.

Q. If the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, had kept a cloſe Line with the Admiral, and had bore down equally with him, and brought up in their proper Stations in a Line with him, when he began to engage, By what time would the headmoſt of the Four ſternmoſt *Spaniſh* Ships have been up for the *Rupert* to have engaged?

A. Why, to make a Computation of that, I muſt conſider a little:—The Headmoſt of them fired at the Fireſhip:—The Fireſhip blew up upon the *Real*'s Starboard-ſide, when ſhe was before the Wind; the headmoſt Ship's Shot did not ſeem to reach the Fireſhip then.—Therefore, I believe, it muſt have been between Three and Four o'Clock, before the *Rupert* could have engaged the Headmoſt of thoſe Ships.—But this is Matter of mere Remembrance and Judgment.

Q. If they had continued to bear down, and lain in a proper Station, at a proper Diſtance, in a Line with the Admiral, Would the *Rupert*'s Shot have reached the *Hercules*; or could the *Rupert* have brought any of her Guns to bear upon the *Hercules?*

A. As there would, in that Caſe, have been Two Ships between the *Marlborough* and *Rupert*, ſhe could only have brought her Bow-Guns to bear upon the *Hercules*, and thoſe at random Diſtance; for there was a great Swell; and it was not proper for Ships to be at ſo near a Diſtance to one another in the Line, as otherwiſe they ought to have been.

Q. Would the Shot of the *Rupert* have reached the *Hercules?*

A. It muſt have been thoſe from the Foremoſt Guns; becauſe, as I ſaid before, ſhe muſt have been the Third Ship aſtern of the *Marlborough*.

Q. Seeing the *Dorſetſhire* and *Eſſex* did not go down in their proper Stations; if the *Rupert* had taken the *Dorſetſhire*'s Birth, Would ſhe not have been in a proper Station, to have engaged the *Hercules*, as cloſe as the *Marlborough* did the *Real?*

A. Yes, undoubtedly; but the *Dorſetſhire* ſhould have been the *Hercules*'s Ship.

Q. How many Ships of ours might there be between the *Torbay* and *Rupert*, when the Fireſhip blew up?

A. According to the Diſpoſition of the Line of Battle, there was the *Royal Oak*, *Dunkirk*, and *Cambridge*.

Q. Where was the *Torbay* at that time? Was you ahead or aſtern of the *Neptune*, when the Fireſhip blew up?

A. Almoſt abreaſt of her:—The *Neptune* got

got the Start of me in the Morning; and I could never recover it; but when the Fireſhip blew up, I was ſo near abreaſt of her, that when the Admiral made the Signal to give over Chace, and the Vice-Admiral hauled up, and ſhortened Sail thereupon, I was obliged to lay all aback, to prevent his being aboard of me.

Q. With reſpect to the *Torbay*, What was the Situation of the ſternmoſt of the Four *Spaniſh* Ships at the ſame time?

A. Before our Beam; and ſhe was before the Vice-Admiral's Beam.

Q. You mean the *Iſabella*.

A. Yes, the *Iſabella*; the Vice-Admiral was before my Beam, and the *Iſabella* before his Beam; for our People were obliged to look out of the Port abaft the Main-chains (I believe the Port without the Gun-room Port), and then juſt ſaw her clear of the *Neptune*'s Stern.—This was when the Fireſhip blew up.

Priſoner aſked,

Q. What Diſtance do you think you was from the *Rupert?*

A. I can't ſay; for I never ſaw her, to know her particularly to be the *Rupert*:—I never ſaw any thing ahead, but what came open with the Starboard-Leech of my Sails.

Q. What Sail had you out then?

A. All the Sail I could make, Spritſail and all.

Q. Had you your lower Studding-Sails?

A. No; I had not the lower Studding-Sails, which it was not proper to carry in ſo little Wind, and ſo great a Swell:— I had every Sail out that could draw.

Q. Had you Studding-Sails out on both Sides?

A. No.

Q. Was the Lee-Sheet of your Mainſail aft?

A. Yes:— If I could have abated my Sail, it would have been the Spritſail, that I might not have been blinded.

Q. Was it abaft the Leech of your Foreſail or Mainſail, that you ſaw the *Namur* and *Marlborough?*

A. It was under the Foot of the Mainſail, to Leeward of the Leech of the Foreſail and Spritſail: I kept on the Starboard-ſide of the Deck, minding my Steerage.

Q. Might not the *Rupert* be in a Line with the Admiral, when you ſaw nothing but the *Marlborough* open with the Leech of your Foreſail; and you not ſee it?

A. Yes; after the Admiral hauled off: For then my Spritſail and Foreſail intercepted my Sight of him: He hauled off from the *Real*, acroſs that Space in which I ſaw them.

Q. Were there Four, or Five, of the Enemy's Ships coming up aſtern?

A. In the Morning there were Six; I ſaw Six aſtern of the *Spaniſh* Admiral: The *Hercules*, which was the next aſtern of him, we ſaw always; but what became of the Second Ship, I don't well know: But as there was a Remark made in my Minutes, by my Amanuenſis, that one of the Ships bore away without Firing, I apprehend, that muſt be ſhe, becauſe I can account for all the reſt of them.

Q. Can you tell what particular Ship the Cloud of Smoke might be from, which you ſaw?

A. No; I can't tell; it might be from them all.

Q. Might not the *Rupert* be in a Line with the *Marlborough*; and you not ſee it?

A. Not while the Admiral continued to engage.

Q. Might not ſhe be in a Line with the *Marlborough* ſome Part of the Day; and you not ſee it?

A. No; for I ſaw the *Marlborough* the whole Afternoon after the Action began: I ſaw the *Marlborough* always, and the *Real* always: When the Admiral hauled off, I ſaw him no more; but I ſaw the *Real* and *Marlborough* the whole Afternoon: The *Namur* was ahead of the *Marlborough*, while the Admiral engaged; and therefore, if any other Ship had been in a Line with the *Marlborough*, I muſt have ſeen her aſtern of the *Marlborough*, as plainly as I ſaw the *Marlborough* aſtern of the Admiral.

Q. If you ſaw the *Real* and *Marlborough*, you muſt certainly ſee all the Ships aſtern: Did you ſee no Ships engage the *Spaniſh* Ships coming up?

A. Not one: I did not ſee any Ship come to Leeward of my Sails, to engage them: I ſaw Smoke, and the Breach of the Shot between them; but I did not ſee our Ships, which the Shot came from.

Q. Did the ſternmoſt *Spaniſh* Ships ever paſs my Ship?

A. I did not ſee your Ship, and therefore I can't tell; but the Shot of the headmoſt hardly reached the Fireſhip, juſt before ſhe blew up.

Q. Can you be poſitive, it was not a Scool of Fiſh, inſtead of Shot, that you ſaw in the Water?

A. They appeared very plain to me to be Shot, by their falling into the Water.

Q. Did you ſee the *Cambridge* fire at theſe Ships?

A. I did not, for the Reaſons I have already given; my Sails prevented me from ſeeing her, as well as the other Ships ahead, and to Windward.

Q. Might not thoſe Shot come from the *Cambridge?*

A. I can't tell what Ships they came from:— When the Vice-Admiral fired at the ſternmoſt of the *Spaniards*, and not till then, I furled my Spritſail, thinking it was time for me not to be blinded any longer.

Q. How far might you be from that Breach of Shot, which you ſaw?

A. I can't form any Judgment of it.

Q. Pray, recollect: When you wore, as you had no Sails to intercept your Sight, did you then ſee the *Rupert?*

A. No; I did not obſerve you then: The Backing my Sails, to keep clear of the Vice-Admiral, who I was then very near being on board of, and Wearing, gave me ſufficient Employment at that time.

Q. That laſted but a little while.

A. Yes; it laſted a great while, becauſe of the little Wind, and great Swell.

Q. So you never looked aft at all, to ſee what Signals the Admiral had abroad?

A. Never, till my Ship wore, and was come to on the Starboard-tack, and I had trimmed my Sails, as the Vice-Admiral was ſtill the next Ship to me; and by that time it was almoſt dark, and but juſt Light enough to ſee the Admiral was about, but not to know the other Ships in particular.

Q. Did you ſee no Ships engaging the *Spaniſh* Ships, after you wore?

A. Yes; upon the Starboard-tack, engageing the ſternmoſt *Spaniſh* Ships, as they paſſed them.

Q. Did you not ſee any Ships upon the Larboard-tack, engaging them?

A. No.

Q. Did Mr. *Mathews* wear before Mr. *Leſtock?*

A. Much about the ſame time, or rather before.

Q. Did you not all wear, *Cambridge* and all, and run away; and leave the poor *Royal Oak* and me engaged with the Five Sail of the Enemy?

A. I know nothing of it; we all wore about the ſame time the Admiral did:— I don't know of your being engaged with the Five Sail: All I know of any Ships being engaged after Wearing, is, that the Admiral, and the Ships near him, upon the Starboard-tack, were firing their Larboard-Guns, as the ſternmoſt Ships of the Enemy paſſed by them, to join their Admiral.

Q. You ſay, The *Hercules* bore away with her Admiral?

A. Yes, I think ſhe did; they all bore away after their Admiral; I did not obſerve her to ſtay behind.

Q. Pray, recollect, Do you remember, whether the *Spaniſh* Admiral's Second was not beat away to Leeward, out of Gun-ſhot, an Hour before her Admiral bore away?

A. I don't remember it:— I remember the Second ahead bore away; and I ſaw the Second aſtern bear away a little, and haul up again.

Q. What was the Reaſon ſhe hauled up again?

A. To get into a Line with her Admiral, and do her Duty.

Q. Whether it might not probably be occaſioned by a Ship of the Admiral's Diviſion ſtanding down to her?

A. I did not ſee any Ship of your Diviſion then, but the *Namur* and *Marlborough*:— I ſaw no Ship go to Leeward towards her, enough to be open of the Lee-Leech of my Sails, as I ſaid before:— But how could a Ship to Windward of her, force her up again?

Priſoner. By bearing down to her.

Witneſs. None did.

Q. Might not a Ship have gone down near enough to her, without being open of your Sails, to have occaſioned her coming into the Line again, and you not ſee her?

A. No, 'twas impoſſible; the *Hercules* was always ſo much open with my Sails, that no Ship, which was not open with them alſo, could have occaſioned that Effect.

Q. How far diſtant do you judge the *Hercules* was from the Four *Spaniſh* Ships coming up?

A. I can make no Judgment: I ſaw the *Hercules* all the while; but I did not ſee the other Ships, only when I looked on purpoſe to ſee them.

Court to Priſoner.

It will be proper to diſtinguiſh, at what time you mean.

Priſoner to Witneſs.

At the firſt time you ſaw the *Hercules*?

A. The firſt time I ſaw the *Hercules* was at Break of Day.

Q. I mean, after the Beginning of the Engagement.

A. I had only the Angle of their Bearings, to form a Gueſs from; and I did not take notice enough of them, to form a Judgment.

Q. I only want to know from your own Judgment.

A. When the Admiral firſt began the Engagement, the ſternmoſt of thoſe Four Ships was about Five Miles from me; but I can't ſay how far the headmoſt of them was from the *Hercules.*

Q. Was there any Ship aſtern of the *Spaniſh* Admiral, for the *Rupert* properly to have engaged, till the Four *Spaniſh* ſternmoſt Ships came up?

A. No; I don't think there was; becauſe, if the Four Ships aſtern of the *Marlborough* had bore down equally with the *Marlborough*, the *Rupert* could not have engaged the *Hercules* but with her foremoſt Guns, as I have ſaid before.

Priſoner. I have a Queſtion to propoſe to Captain *Gaſcoigne*, if the Court will give me Leave.

The *Court* told him, He might ask what he thought fit.

Q. Do you think, as an old Officer, That it was conſiſtent with my Duty, as an Officer, to have run up ahead of the *Dorſetſhire* and *Eſſex*, to the *Marlborough?* or to have lain properly in my Station, to have received the *Spaniſh* Ships, as they came up?

A. The Fighting Inſtructions injoin, That, if any Ship does not do her Duty, the next Ship is

to ſupply her Place: And therefore, under that Injunction, as the *Dorſetſhire* did not bear down, it was the Duty of the *Eſſex*, and—

Q. Suppoſe there are only Two Ships to engage with, and there are Ships of the Enemy coming up, and no Signal of Diſtreſs from any of our Ships—Was it my Duty, as an Officer, to wait for, and engage them; or to break the Line?

Here a Member of the Court ſaid, It was not breaking the Line; it was cloſing the Line.

A. As that Member very juſtly obſerves, it would not be breaking the Line, but cloſing it.

Priſoner. By the Twenty-ſecond Article of the Fighting Inſtructions, No Ship is to go out of her Station, to the Aſſiſtance of another, without a Signal of Diſtreſs appears; and then the next Ship to her, is to relieve her. And, by the Twenty-third Article, If the Admiral ſhould be in Diſtreſs, and make a proper Signal, the whole Fleet are to go to his Aſſiſtance: But if any other Ship is in Diſtreſs, the next Ship, only, is to go to relieve her.

Court asked,

Q. How long was it, from the Time you ſaw the Admiral begin to engage, till he hauled acroſs the Space you ſaw him, and went out of your Sight?

A. It was remarked, by my Watch: But the Paper, in which that Remark was made, was loſt, before I had time to examine it: But, I think, it was before the *Marlborough* loſt her Maſts.

Then he withdrew.

The Court adjourned till To-morrow Morning, at Eight o'Clock.

The Fourth Day upon Captain AMBROSE'S *TRYAL,*

On Board His MAJESTY'S *Ship the* London, *at* Chatham,

WEDNESDAY, 23d *October*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, as were Yeſterday.

The Priſoner was brought in by the Marſhal: And the Witneſſes ordered to be called in.

Lieutenant *Leonard Bellamy*, of the *Torbay*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 83.): And he declared the ſame to be true.

Q. Did the *Rupert* go down far enough, to be in a Line with the Admiral?

A. No.

Q. Did you ſee her engaged, any time of the Day?

A. I ſaw a great deal of Smoke go to Leeward of our Foreſail; and I ſaw Shot from the Ships ahead of us, fall ſhort of the Enemy.

Q. Where was you quartered?

A. In the Waſte, on the Upper-deck.

Q. Did you particularly mark the *Rupert?*

A. No—I could not obſerve more than looking now-and-then over our Larboard-Gunnel, our Spritſail being ſet.

Q. Did you ſee thoſe Ships to Windward?

A. Yes; I did once ſee them, about Three o'Clock.

Q. What Ships were they?

A. The *Dorſetſhire*, *Eſſex*, *Rupert*, *Royal Oak*, *Dunkirk*, and *Cambridge*; according to the Line of Battle.

Q. Did you ſee them fire then?

A. Yes; I ſaw ſome of them fire: I can't ſay, whether all did, or not.

Q. Are you ſure all thoſe Ships were to Windward of the Admiral?

A. I did not ſee any of them upon our Starboard-Bow; ſo they muſt be to Windward.

Q. Did their Shot reach the Enemy?

A. No; I believe not.

Q. Did you never look to Leeward?

A. Yes.

Q. Did you then ſee the *Marlborough*, and *Namur*, in a Line?

A. Yes.

Q. Did you then look to Windward?

A. Yes.

Q. And did you then ſee the Four Ships to Windward?

A. Yes.

Q. Did you ſee the *Marlborough*, when her Maſts went?

A. I ſaw her, immediately afterwards, when the Smoke cleared up.

Q. Did you ſee the Fireſhip go down?

A. Yes.

Q. Did you ſee any one of thoſe Ships, particularly the *Rupert*, go down, to aſſiſt the *Marlborough*, when her Maſts were gone?

A. No; I did not.

Q. Did any Ship go down, to cover the Fireſhip?

A. No.

Q. Did any Ship fire at the Time when the Fireſhip went down?

A. Yes;

A. Yes; ſome of the Ships ahead, and to Windward, of Mr. *Leſtock*, were firing then.

Q. What Ships were they?

A. Thoſe that I mentioned before; the *Dorſetſhire*, *Eſſex*, *Rupert*, *Royal Oak*, *Dunkirk*, and *Cambridge*.

Q. You ſaw no Ship cover the Fireſhip?

A. No; not any.

Q. Might not the *Rupert* be to Leeward, and in a Line with the *Spaniards*; and you take her for one of the Enemy's Ships?

A. I think, not—For the Four *Spaniſh* Ships were ſo diſtinctly by themſelves, that any-body might know them.

Q. Could you diſtinguiſh their Colours?

A. Yes.

Q. What Diſtance was you from the *Rupert*, at that time?

A. About Three Miles.

Q. From the Beginning of the Engagement, to the Time the Admiral wore, Did you ſee any of thoſe Four Ships, to Windward, within Point-blank?

A. No, I think, not, except the *Dorſetſhire*; who, I believe, might be ſo, juſt before the Admiral wore.

Q. Did you ever ſee the *Rupert* within Point-blank?

A. I can't ſay, I ever ſaw the *Rupert*, to take particular Notice of her.

Q. When the *Spaniſh* Ships engaged, Had they their Colours flying?

A. Yes.

Q. Did you ſee any *Engliſh* Colours in the *Marlborough*'s Wake, or in the *Spaniſh* Line?

A. No.

Q. Was it poſſible, that a *Britiſh* Ship could be in a Line with the *Spaniards*; and you not perceive it?

A. No; I don't think it was poſſible.

Q. You ſay, You ſaw ſeveral Shot fall ſhort from the Four Ships, to Windward.

A. Yes.

Q. At what Ships do you imagine they fired?

A. It muſt have been at the Headmoſt and Second of the Four *Spaniſh* Ships coming up.

Q. If the *Rupert*, or any one of the Four Ships, had gone down, and engaged thoſe *Spaniſh* Ships properly, Muſt you not have ſeen her to Leeward of your Foreſail?

A. Yes, to be ſure, I muſt.

Q. Did you, at any time, before the Admiral made the Signal to wear, ever obſerve the *Rupert* to be in a Line with the *Namur* and *Marlborough*?

A. No; ſhe was always to Windward. when I obſerved her.

Q. Did you obſerve her, when the *Marlborough*'s Maſts went?

A. Yes.

Q. Was ſhe to Windward then?

A. Yes.

Q. During the Time you obſerved the *Rupert*, and thoſe Ships, fire, and you imagined they fired at the Two headmoſt of the *Spaniſh* Ships, Did you obſerve any of thoſe *Spaniſh* Ships edge away from their Fire?

A. The headmoſt of the Five did bear away.

Q. Why did ſhe edge away, as you apprehend?

A. I can't ſay, from what Cauſe; I did not obſerve the Shot, from our Ships, to reach her.

Q. Did you obſerve, whether that Ship, that edged away, was to Windward, or to Leeward, of her own Admiral's Line?

A. She ſeemed to be in her Admiral's Wake, when ſhe bore away.

Aſked by the Priſoner,

Q. Where was your Ship, when the Admiral firſt began to engage?

A. Aſtern of the *Neptune*.

Q. But, in your Depoſition, you ſay, You was ahead of the *Neptune*.

A. That was our Station in the Line of Battle; but we could never get ahead.

Q. How far was you from your own Admiral?

A. Better than Half a Mile, ſometimes; and ſometimes nearer.

Q. Was you upon his Weather-Quarter?

A. Always; after we dropt aſtern of him.

Q. Then the Vice-Admiral muſt interrupt your View—Expreſs, how you could obſerve the Four Ships to Windward, if you was upon the Admiral's Weather-Quarter.

A. We could obſerve them the better—We were about a Point upon our Admiral's Weather-Quarter.

Q. You ſay, There were but Four *Spaniſh* Ships coming up aſtern?

A. I ſaid, Five.

Q. Was thoſe *Spaniſh* Ships coming up in a cloſe Line together?

A. No:— There was a great Diſtance between the *Hercules*, and the headmoſt of the Five; and a great Diſtance again between her, and the headmoſt of the Four.

Q. Were the Four pretty nigh together?

A. Yes:—They were pretty well in a Line.

Q. Was you to Windward of Mr. *Mathews?*

A. We were in a Line with the *Marlborough:* We ſteered after Mr. *Leſtock*; and he ſteered for the *Marlborough*, as I apprehend.

Q. Did you obſerve any of them *Spaniſh* Ships paſs by the *Rupert* and *Royal Oak*, and get up to their Admiral, and fire at the *Marlborough*, or Fireſhip?

A. Yes; they fired at the Fireſhip.

Q. Did they go ahead of the *Rupert?*

A. I can't ſay, whether they went ahead of the *Rupert*, or not.

Q. You ſay, You ſaw ſome Ships fire, when the Fireſhip went down: What Ships were they that fired?

A. I

A. I can't tell.

Q. Did you ſee all the Four Ships fire, when the Admiral began to engage; or did you ſee only One or Two firing?

A. There was firing from ſome Ships; but, from which, I don't know.

Q. How did the ſternmoſt *Spaniſh* Ship bear from you, when Mr. *Leſtock* fired at her?

A. Before our Beam, far enough: — I am very well convinced, becauſe I went to the foremoſt Gun; and, from thence, could not ſee a bit of that Ship's Stern.

Q. What hindered you?

A. She was too far ahead.

Q. Do you think, That the ſternmoſt Ship's Shot could reach the *Royal Oak?*

A. Upon my Word, I cannot tell.

Q. How far diſtant might the *Royal Oak* be from you?

A. I could not ſee her.

Q. At the time you obſerved the headmoſt of the Four *Spaniſh* Ships bear away, Was the *Real* then bore away?

A. I believe ſhe was then before the Wind.

Q. Was that before, or after, the Fireſhip went down?

A. I believe, the Fireſhip was gone down then.

Q. Can you ſay poſitively ſhe was?

A. I believe ſhe was; but I am not poſitive.

Then he withdrew.

Lieutenant *Benjamin Wells*, of the *Torbay*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 76.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Middle-deck.

Q. What Diſtance might the *Rupert* be from you, when the Admiral began to engage?

A. I don't know.

Q. Did you ever ſee the *Rupert?*

A. I don't remember to have ſeen her particularly: — I ſaw Four Ships to Windward; which I afterwards, by the Line of Battle, found to be the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*.

Q. Did you ſee the *Rupert* fire?

A. I can't ſay I ſaw any Ship particularly; I ſaw Smoke from all the Ships.

Q. Where did you ſee the Smoke?

A. The Ships were a little upon our Weather-Bow, and I ſaw the Smoke go to Leeward.

Q. Did their Shot then go home?

A. No: — I ſaw ſeveral Shot fall ſhort into the Water; but I can't tell from what Ships.

Q. Were they near enough to the Enemy to do Execution when they fired?

A. No; I believe not.

Q. Did you ſee the *Marlborough*'s Maſts go away?

A. I can't ſay, that I ſaw them fall; but I ſaw her about that time, or juſt after:—There was ſo much Smoke, I could not ſee them fall.

Q. Did you ſee any of the Four Ships bear down to give her Aſſiſtance?

A. No.

Q. Did you ſee the Fireſhip go down?

A. Yes.

Q. Did none of thoſe Ships go down to cover her?

A. No:—No Ship went down to cover her.

Q. Was you, at any time of the Firing, upon Deck?

A. No; I was not upon Deck: — All my Obſervation was from the Entering-port.

Q. Did you look out of the Weather-Entering-port, at the Time the Fireſhip bore down?

A. Yes: — I looked out of the Larboard-Entering-port.

Q. Did you ſee any of thoſe Four Ships out of that Port to Windward?

A. Yes:—I juſt ſaw them a little upon our Larboard-Bow.

Q. Did you ſee them fire then?

A. Yes:—I think they were all firing then.

Q. At what Ship do you think they fired?

A. I can't tell.

Q. Did you, ſoon after, ſee the *Spaniſh* Ships to Leeward?

A. Yes:—I ſaw them quickly after.

Q. From whence did you ſee them?

A. Out of the Starboard-quarter-Gallery.

Q. At what Diſtance were thoſe *Spaniſh* Ships then from you?

A. I can't tell.

Q. How many *Spaniſh* Ships were there aſtern of the *Spaniſh* Admiral?

A. I think there were Five, including the *Hercules*.

Q. At the time you looked out of the Entering-port, and ſaw our Four Ships upon your Larboard-Bow, Could you ſee the *Namur* and *Marlborough?*

A. No: — They were upon our Starboard-Bow.

Q. Did you ſee the *Namur* and *Marlborough* in a Line?

A. Yes: — When they engaged the *Real*, they were in a Line; but I can't ſay what they were at the time I ſaw the Fireſhip bear down.

Q. Were there any of our other Ships in a Line with them?

A. No: — I did not ſee the Four Ships till the Fireſhip bore down.

Q. At the time you looked out of the Entering-port, when the Fireſhip was bearing down, and you ſaw thoſe Four Ships upon your Larboard-Bow, are you ſure that the *Cambridge* and *Dunkirk* were not Two of them?

A. I can't be certain, whether they were or not; but I think they were not.

Q. Did you ſee any more than Four?

A. Only Four.

Q. What Ships did you take thoſe Four to be, that you ſaw from your Larboard-Bow?

A. The Ships I before-mentioned; the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*:—They appeared ſo to me only by the Line of Battle.—I can't poſitively ſay; but I imagined, the *Dunkirk* and *Cambridge* were then ahead of the *Neptune*: We were then aſtern of the *Neptune*, out of our Station.

Aſked by the Priſoner,

Q. You don't know the Diſtance I was from you?

A. No; I can't tell.

Q. Could you particularly diſtinguiſh my Ship?

A. No.

Priſoner. As he does not know the Diſtance he was from me, and could not diſtinguiſh my Ship, I'll aſk him no more Queſtions.

Then he withdrew.

Lieutenant *Joſeph Bucknall*, of the *Torbay*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 77.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Middle-deck.

Q. Did you know the *Rupert* particularly among the Four Ships aſtern of the *Marlborough*?

A. No; I did not.

Q. Were thoſe Four Ships to Windward of the Line?

A. Yes.

Q. Did they lend any Aſſiſtance to the *Marlborough*?

A. No.

Q. Did they go down to cover the Fireſhip?

A. No.

Q. Did you ſee their Shot fall ſhort?

A. Yes:—I ſaw ſeveral fall into the Water.

Q. Did you, in any Part of the Action, from the Beginning of the Engagement till the Admiral wore, ſee any of thoſe Ships engaged with the Enemy, near enough to do proper Execution?

A. No; I believe not.

Q. Do you think it was poſſible, during any time of the Engagement, for any of thoſe Ships to be ſo far to Leeward, as to be in a Line with the *Spaniſh* Admiral, and you not perceive it?

A. I don't believe any of them could, and I not perceive it.

Q. Did you, at any time after, hear, that any of thoſe Ships had ſtraggled to Leeward, and got into the Line with the *Spaniards*, as juſt before mentioned?

A. No; I never did.

Q. Do you know any thing particularly of the *Rupert*?

A. I don't ſpeak particularly of the *Rupert*, but only in general of all the Four.

Q. Did you know the *Rupert* was one of thoſe Ships?

A. No:—I can only ſpeak of them by Name, according to the Line of Battle.

Aſked by the Priſoner,

Q. Can you ſwear, that the *Rupert* was one of thoſe Four Ships that were to Windward?

A. No:—There were Four Ships in that Situation; and, according to the Line of Battle, ſhe was one of them.

Q. Did you particularly know the *Rupert*?

A. No:—I did not take any particular Notice of her, or of any one of the Four.

Q. Was you in a Line with the Admiral, when you ſaw thoſe Ships to Windward?

A. No:—Not till after the *Marlborough* loſt her Maſts; then the Vice-Admiral and we ſteered for the Admiral.

Q. Was you in a Line with the Admiral at the time the *Marlborough* loſt her Maſts? Was you to Windward, or to Leeward, of the Admiral?

A. We were rather to Windward of the Admiral.

Q. Was you in a Line with the *Namur* or *Marlborough*, at the time ſhe loſt her Maſts?

A. I miſtook; we did not ſteer for the Admiral; we ſteered directly for the *Marlborough*:—After the *Marlborough*'s Maſts were gone, the *Namur* was upon our Weather-Bow; and we ſteered after the *Marlborough*, who was a little on our Lee-Bow.

Q. Was the Admiral to Windward of you then?

A. Yes:—He was hauled off:—He was on our Weather-Bow, when we ſteered for the *Marlborough*.

Q. When you ſteered for the *Marlborough*, How many Ships did you ſee on your Weather-Bow, between you and Mr. *Mathews*?

A. I really can't tell; I did not take notice; but, I believe, moſt of the Fleet.

Q. You was to Leeward of Mr. *Mathews*; Was you not?

A. Yes; when we ſteered for the *Marlborough*.

Court aſked,

Q. Was you abſolutely to Leeward, or only ſteering to Leeward?

A. Only ſteering to Leeward.

Q. If you had hauled cloſe upon a Wind, and Mr. *Mathews* had done the ſame, would you then have been in a Line with him, or to Windward of him?

A. To Windward of him.

Court. Why then you was to Windward of him ſtill.

Priſoner aſked,

Q. If theſe Four Ships aſtern of Mr. *Mathews*, which you ſaw upon your Weather-Bow—

Court. Name the Ships to him.

Priſoner. I need not name them; there were Seven, and I want to know whether he knows them.

Court. Ask him in your own Way.

Priſoner aſked,

Q. If the Four Ships you ſaw on your Weather-Bow, had hauled their Wind, as Mr. *Mathews* had done, Whether would Mr. *Mathews* have been to Windward, or to Leeward, or in a Line with them, or in what Poſition?

The Witneſs remaining a little while ſilent, one of the Members ſaid, — You ſee he knows ſo little, that what he ſays, can have very little Weight with the Court: You ſee, he has little or no Judgment.

Priſoner. If you ſay he has no Weight in the Evidence he has given againſt me, I will ask him no more Queſtions.

Preſident. We have Evidence enough; we may throw Half of it away, and have enough: So that it is no Matter, what you make of him.

Priſoner. If, upon croſs-examining him, I can find, his Evidence ought to have no Weight; I hope, I have a Right to it.

Judge-Advocate ſaid to the Witneſs,

Every Man can ſay Yes, or No, to what he is asked; and if you don't know, you can ſay ſo.

A. I can't tell.

Q. Might not any of thoſe Ships, aſtern of the *Marlborough*, have been to Leeward of you, and you not ſee them?

A. If any had been to Leeward, I believe I muſt have ſeen them.

Q. How many did you ſee to Windward, between the Admiral and *Torbay?*

A. I told you juſt now, I cannot tell.

Q. Can you tell, how many there were to Windward?

A. No, I know there were Seven in the Line of Battle.

Q. How many of them did you ſee?

A. I only obſerved the Four aſtern of the *Marlborough*; but I did not take notice of the *Dunkirk* and *Cambridge*, at any time of the Action.

Court aſked,

Q. When you ſaw thoſe Four Ships to Windward, one of which you imagine was the *Rupert*, by the Line of Battle, Did you then ſee the *Dunkirk*, *Cambridge*, and *Neptune?*

A. I ſaw the *Neptune*; but I did not obſerve the *Dunkirk* or *Cambridge*.

Then he withdrew.

John Maſter, Maſter of the *Torbay*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 84.): And he declared the ſame to be true.

Q. Acquaint the Court, what you know of the *Rupert*'s Behaviour, during the Action.

A. I know no more, than that the Four Ships, ſtationed aſtern of the *Marlborough*, were to Windward; and could have gone down, but did not, either to the Aſſiſtance of the *Marlborough*, or to cover the Fireſhip; nor were they within point-blank Shot of the Enemy all that Day, till after the Fireſhip blew up; nor were they in a Line with the Admiral and *Marlborough*, nor even with the Admiral, after he had hauled off from the *Marlborough*; for I could ſee the *Namur* right ahead, and the Four Ships upon our Bow.

Q. I ſuppoſe you mean the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, that you ſay were to Windward?

A. Yes; I took it to be them—Thoſe were the Four Ships ſtationed according to the Line of Battle, aſtern of the *Marlborough*, in the Admiral's Diviſion: I wondered who they could be, kept ſo far to Windward; and, upon looking at the Line of Battle, ſaw it was them; and I ſaid to Captain *Gaſcoigne*, I wonder that thoſe Ships throw their Powder and Shot away ſo! And I ſaw by their Blue Enſigns, that they were of the Admiral's Diviſion; and I could not imagine, that any Ships, ſtationed ahead of the Admiral, had fallen aſtern of him.

Q. Did you ſee the *Dunkirk* and *Cambridge* at that time?

A. Yes, I ſaw them, when I ſaw the other Four Ships.

Q. How did they appear to you? Were they to Windward, or to Leeward, of the other Four Ships?

A. The *Dunkirk* and *Cambridge* were to the Northward, and nearer to the Four ſternmoſt Ships of the Enemy, than the Four Ships aſtern of the *Marlborough* were.

Q. You ſay, The *Rupert* was not within Point-blank?

A. No, ſhe never was.

Q. Did you ſee her fire?

A. I believe all the Four fired: I ſaw a great deal of Smoke.

Q. How do you know the *Rupert* was not within Point-blank?

A. I am very well aſſured of it, by the Diſtance I obſerved them to be from the Enemy: The Ships of the Vice-Admiral's Diviſion, ahead of him, were not within Point-blank, and the Four Ships were to Windward of them.

Q. Did you ever take notice of the *Dorſetſhire*, *Eſſex*, *Rupert*, or *Royal Oak*, after you wore?

A. I can't tell: It was juſt dark; and I know little of them after we wore.

Q. How do you know, that thoſe Ships were not within Point-blank?

A. Very well, by the Diſtance; for Point-blank is not the Breadth of this River over: I think, Point-blank is about One hundred and Eighty Paces; and I ſaw thoſe Ships at a far greater Diſtance: I ſaw their Shot fall into the Water.

Q. Might not the *Rupert* have been to Leeward among the Enemy; and you not have ſeen her?

A. No, it's impoſſible ſhe could:—I am ſure ſhe could not be ſo far to Leeward, and I not ſee her.

Q. What

Q. What Ship's Fire do you think the Four *Spaniſh* ſternmoſt Ships received, after our Ships wore?

A. I can't ſay; it was almoſt dark; but, as the Ships near the Admiral paſſed them, they muſt have received the Fire of thoſe Ships.

Q. Muſt they not have received the Fire of Mr. *Rowley*'s Diviſion?

A. No; he kept his Wind cloſe.

Q. When you looked to Leeward, under the Lee-Leech of your Foreſail, Did you ſee the *Marlborough*, when ſhe loſt her Maſts?

A. Yes.

Q. Did you at the ſame time ſee the *Namur?*

A. Yes; I went over to Windward, and ſaw the *Namur* from the Weather-ſide.

Q. Did you ſee the Admiral, when he hauled off?

A. Yes.

Q. How long did he engage, before he hauled off?

A. He had not engaged above an Hour, before he hauled off: — When I went over to Windward, to look at thoſe Four Ships, I ſaw the *Namur*; and her Stern was to the *Marlborough.*

Q. Did any Ship go to the *Marlborough*'s Aſſiſtance, after the *Namur* hauled off?

A. No: When I was looking at thoſe Four Ships, I ſaw the *Namur* juſt open, and thoſe Four Ships were off with our Cat-head.

Q. Could you diſtinguiſh the *Rupert* among thoſe Four Ships?

A. No:—I did not particularly take notice of her: She was eaſily to be diſtinguiſhed; but I had not the Curioſity to look for any particular Ship.

Q. Had all thoſe Ships Blue Colours?

A. Yes.

Q. Had any Ships of the Fleet Blue Enſigns, beſides the Centre Diviſion?

A. No;—none had: I ſaw the *Dunkirk* and *Cambridge* with White Enſigns flying; for the Van and Rear were all White.

Q. Was there more than Four Ships ſtationed in the Centre Diviſion, aſtern of the *Marlborough*, with their Larboard-tacks on board?

A. No;—no more.

Q. Pray, name them.

A. The *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak.*

Q. When you ſaw the *Marlborough* to Leeward, and the Admiral open to Windward, did you ſee any of thoſe Four Ships to Leeward of the *Namur?*

A. No:—They were all to Windward; for they were open with our Cat-head.

Q. When you ſaw thoſe Four Ships engage, at any time of the Day, Did you ſee any of thoſe *Spaniſh* Ships bear away, or alter their Courſe, from the Fire of our Four Ships?

A. No, I neither ſaw them bear away, nor alter their Courſe; nor were our Ships near enough to oblige them to do ſo: I ſaw the headmoſt of the *Spaniſh* Ships yaw, and fire at the Fireſhip; but I believe their Shot did not reach.

Q. Did you ſee any one of our Four Ships, aſtern of the *Marlborough*, endeavour to weather another by getting her Fore-tack on board?

A. No.

Q. Did you never ſee the *Royal Oak* to Windward of the others?

A. The ſternmoſt was the leewardmoſt: I did not know the *Royal Oak.*

Priſoner asked,

Q. What Diſtance might you be from the *Rupert?*

A. Between Three and Four Miles; better than Three Miles.

Q. At what Time?

A. At Four o'Clock in the Evening: We were farther off before.

Q. How far diſtant might thoſe Four *Spaniſh* Ships be from the *Hercules*, when the Admiral firſt began to engage?

A. Between Three and Four Miles.

Q. Did any of the Four *Spaniſh* Ships paſs by any of our Four Ships?

A. They never came up near them: They were never abreaſt of them, till about the Time the Fireſhip blew up, about Five o'Clock; and then the headmoſt of them might be near abreaſt of the ſternmoſt of our Four Ships; but at a great Diſtance.

Q. The Ships ahead of the Admiral, upon the Larboard-tack, were the *Norfolk* and *Princeſſa*; did they,—Did any of the Ships ſtationed ahead of the Admiral, with their Larboard-tacks on board, fire at the ſternmoſt *Spaniſh* Ships, after Wearing, upon the other Tack?

A. I can't ſay what Ships then fired; it being near dark.

Q. Did they do any Damage to thoſe Four *Spaniſh* Ships?

A. I don't know:—I believe the Four *Spaniſh* Ships did not receive any Damage: — I believe that One of thoſe *Spaniſh* Ships, the ſternmoſt of them by her Bulk, had the *Real* in Tow next Day.

Court asked,

Q. Were there no Ships in Tow but the *Real?*

A. I believe not.

Q. Had any of the other Four Sail received any Damage?

A. I believe not, there could be but very little Damage done: What Damage they received was in paſſing; and that was but a very little time.

Priſoner asked,

Q. When the Admiral began firſt to fire, How ſoon after did you obſerve our Four Ships aſtern begin to fire?

A. About Half an Hour after the Admiral began: And I was very ſorry to ſee them fire, when they were not in a Line.

Q. Can you be poſitive, that the *Rupert* fired at that time?

A. I can't be certain as to the *Rupert*, as I told you before.

Q. Can

Q. Can you be poſitive, that the *Rupert* was one of the Four?

A. I can't ſay particularly; only by the Line of Battle.

Q. Becauſe you ſay the *Rupert* threw away her Shot?

A. I ſaid, The Four Ships did: Your Ship was remarkable, and I might have diſtinguiſhed her; but I had not the Curioſity to obſerve any one in particular.

Q. Might not the Firſt and Second, or any one of the others, fire, and you not remark which particular Ships fired?

A. Yes, doubtleſs.

Q. What Ships might the Four Ships be firing at then?

A. I think it muſt be the Ship aſtern of the *Real*, as ſhe was nearer to them than any of the other Four.

Q. Did any of thoſe Ships ever paſs the *Royal Oak*, or the ſternmoſt of the Four?

A. I believe they never came near thoſe Ships, as I told you before.

Q. When Admiral *Leſtock* fired a Shot at the ſternmoſt Ship of the Enemy, Whereabouts might ſhe be then, with regard to Mr. *Leſtock*?

A. She was before our Cheſt-Tree, and therefore, I believe, before the Vice-Admiral's Beam: We were then juſt aſtern of Mr. *Leſtock*, and I could juſt ſee her over the Vice-Admiral.

Q. Do you think the Shot of the ſternmoſt of the Four *Spaniſh* Ships could then reach the ſternmoſt of our Four Ships?

A. No, I'm certain they could not; for I am well aſſured, that the Shot which could not reach Mr. *Leſtock* from that Ship, could not reach the ſternmoſt of our Four Ships.

Q. At the time you wore, and after it, when you went upon the Starboard-tack, and hauled your Wind, did you hear no Noiſe of Ships engaging?

A. No, I believe there was no Engaging then.

Q. I ſpeak of the Ships aſtern of the Admiral: Did any of thoſe Ships continue engaging upon the Larboard-tack, with the Four or Five of the Enemy, after you wore?

A. No; I heard them firing after they had wore, and got upon the other Tack.

Then he withdrew.

Samuel Cloake, Quarter-maſter of the *Royal Oak*, was called in, and ſworn.

Q. Where was you quartered?

A. At the Wheel on the Starboard-ſide,—at the Lee-Helm.

Q. Declare what you know of the Behaviour of the *Rupert*.

A. We bore away with the *Rupert*; and brought to, when ſhe brought to: In ſo doing, we were very nigh her; which obliged us to lay all aback, and brought us upon her Lee-Quarter: Then the *Royal Oak* began to engage a *Spaniſh* Ship, of about Sixty Guns; and I ſaw the *Rupert* begin to fire alſo at the ſame Ship; and we, and the *Rupert*, continued firing at that Ship about an Hour, till the *Spaniſh* Ship bore away, and got out of Gun-ſhot; then we ſhot nigher the *Rupert*; and Captain *Williams* hailed her, and aſked Captain *Ambroſe*, If he did not think fit to bear down nigher; for he thought, we were too far off: I did not hear any Anſwer: We then put our Helm aweather, and bore down ſingly to the Four *Spaniſh* Ships, that were coming up aſtern; but I did not perceive, that the *Rupert* bore down with the *Royal Oak*: We then began to engage with thoſe Four *Spaniſh* Ships, and continued to engage them about an Hour: The *Rupert* continued, while we were engaged, upon our Weather-Bow, and about a Quarter of a Mile diſtant; I did not take any Notice, whether ſhe fired, during that Time, or not: After we had been engaged about an Hour, we ſet our Jib, and Main-topmaſt Stayſail, and ſhot up nigher the *Rupert*; and continued near her a ſmall time; and then we bore away, under the *Marlborough*'s Stern, the *Rupert* at the ſame time going ahead of the *Marlborough*. Then the Admiral hauled down the Signal for Engaging, and hoiſted a White Flag at the Fore-topmaſt Head, and wore; the *Rupert* then wore after him, and we alſo wore after the *Rupert*; and engaged the Enemy on the other Tack in paſſing by them.

Q. What was you on board the *Royal Oak*?

A. A Quarter-maſter.

Q. When you firſt engaged, Was the *Rupert* to Windward of you?

A. A very ſmall Matter upon our Weather-Bow.

Q. When you ſaw the *Rupert* fire, What Diſtance was ſhe from the Enemy?

A. At that time ſhe was near enough to do Execution, becauſe the Enemy's Shot came over us.

Q. At what time of the Day was that?

A. A little after Two.

Q. How long did you engage?

A. About an Hour.

Q. Did the *Rupert* continue Firing all that Time?

A. Yes.

Q. What became of that Ship?

A. She bore away to Leeward, out of Gun-ſhot.

Q. What did you do then? Did you not bear away after her?

A. No; we ſhot up to the *Rupert*.

Q. Was the *Rupert*, or you, then in the Line of Battle?

A. No; we were not then in the Line, and the *Rupert* was a little to Windward of us.

Q. What did you do afterwards?

A. We ſhot nigher to the *Rupert*.

Q. Where was the *Rupert*, when you ſhot up to her?

A. Ahead of us, a little upon our Weather-Bow.

Q. Did you lie under her Quarter?

 A. Yes;

A. Yes; a little upon her Quarter.

Q. You ſay, You hailed the *Rupert*?

A. Yes.

Q. What did Captain *Williams* ſay to Captain *Ambroſe*?

A. He aſked him, If he would not bear down nearer, as they were too far diſtant for their Shot to do any Execution.

Q. What Anſwer did the *Rupert* make?

A. I did not hear any Anſwer.

Q. Did you hear no Voice?

A. No.

Q. How long did you lie under the *Rupert*'s Quarter?

A. A very ſmall time.

Q. How long?

A. About Half a Quarter of an Hour.

Q. What did you do then?

A. We bore down to the Four Ships.

Q. And then, What did the *Rupert* do?

A. She continued to Windward.

Q. Did not the *Rupert* bear away, when you did?

A. I did not obſerve, that ſhe did.

Q. Could ſhe have bore away, and you not obſerve her?

A. I was very buſy, and did not obſerve.

Q. How long did you engage thoſe Four Ships?

A. About an Hour ſingly; the *Rupert* continued to Windward; and then we ſet the Jib, and Main-topmaſt-ſtay Sail, and hauled up to the *Rupert*.

Q. How far was the *Rupert* to Windward, when you ſo hauled up?

A. About a Quarter of a Mile.

Q. Did you obſerve the *Rupert* engage thoſe Four Ships?

A. I did not obſerve her.

Q. What do you judge was Captain *Williams*'s Reaſon for Hauling up, after engaging thoſe Four Ships?

A. Becauſe, I believe, the Sternmoſt of the Four might have weathered us.

Q. What did you do, after engaging thoſe Four Ships?

A. We hauled up aſtern of the *Rupert*, and left off Engaging.

Q. How long did you lie ſo inactive?

A. A very ſmall time; and then we ran under the *Marlborough*'s Stern.

Q. What time was that?

A. I believe, between Four and Five o'Clock, to the beſt of my Knowlege; for we had no Glaſſes.

Q. Was the Signal for the Line of Battle, hauled down then?

A. No.

Q. Was it before, or after, the Fireſhip blew up?

A. I don't remember when the Fireſhip blew up.

Q. Was it before, or after the *Marlborough* loſt her Maſts?

A. After the *Marlborough* loſt her Maſts, when we went under her Stern.

Q. Did the *Rupert* go ahead of the *Marlborough*?

A. Yes.

Q. Did the *Rupert* go to Leeward, or to Windward, of her?

A. To Windward: Then Admiral *Mathews* hauled down the Signal for Engaging; and hoiſted a White Flag, and wore.

Q. Are you poſitive, the *Rupert* gave you no Aſſiſtance, while you engaged thoſe Four Ships?

A. I did not perceive, that ſhe gave us any Aſſiſtance at all.

Q. Was there any Clamour or Grumbling, on board your Ship, becauſe you had no Aſſiſtance from the *Rupert*?

A. I heard our People wonder, ſhe did not bear down with us.

Q. Are you very ſure, you was never to Windward of the *Rupert*?

A. I am ſure, we never were to Windward of her, after we were engaged.

Q. Don't you remember any thing of your hauling on board your Fore-tack, and ſtanding to Windward of the *Rupert*?

A. I don't remember any thing of hauling the Fore-tack on board, till we wore.

Q. Did the *Rupert* not fire at all at thoſe Four Ships?

A. I did not ſee, whether ſhe did, or not: —I don't remember.

Q. How far was ſhe from you, when you was engaging?

A. A Quarter of a Mile, when we were engaging thoſe Four Ships.

Q. Do you remember what Diſtance, you in the *Royal Oak* was from the Enemy?

A. Better than a Quarter of a Mile.

Q. How far was the *Rupert* then to Windward from you?

A. About a Quarter of a Mile away with our Cat-head.

Q. When the *Rupert* was a Quarter of a Mile upon your Weather-Bow, what Ships was you then engaged with?

A. With the Firſt and Second of the Four.

Q. How did they bear from you?

A. The Firſt was rather before our Beam, and the Second upon our Beam, and the Third was upon our Quarter.

Q. If the *Rupert* had bore down in a Line with the *Royal Oak*, when the headmoſt *Spaniſh* Ship was before your Beam; Would ſhe not have been in a proper Poſition to have engaged with the Headmoſt of thoſe *Spaniſh* Ships, when the *Royal Oak* engaged the Second?

A. Poſſibly ſhe might, as the Headmoſt went farther ahead.

Q. If ſhe had been right ahead of you, inſtead of being upon your Larboard-Bow; Could ſhe not have engaged the Ship, which was before your Beam?

A. Yes;

A. Yes; if ſhe had been a little farther ahead, I believe, ſhe might.

Q. Do you apprehend what I ſay?—You ſay, The *Rupert* was upon your Larboard-Bow: Suppoſe, inſtead of being upon your Larboard-Bow, ſhe had been right ahead of you; Could not ſhe have engaged the Headmoſt of thoſe Ships, if they were paſt your Beam?

A. Very likely ſhe might.

Q. When you hauled off from thoſe Four Ships, thinking the Sternmoſt would have weathered you; Was the Second abreaſt of you, or had the Third ſhot up abreaſt of you?

A. The Second was then upon our Beam, immediately before we hauled off.

Q. When you hauled up to the *Rupert*, from thoſe Four Ships, Did you obſerve the *Rupert* then firing at them?

A. No;—ſhe was not then firing.

Q. Upon the Oath you have taken, Did you not ſee the *Rupert* yaw, with her Helm to and fro, and back her Topſails, and endeavour to drop down ahead of you, in order to engage the Headmoſt of thoſe *Spaniſh* Ships?

A. No; I did not obſerve her to do ſo.

Asked by the Priſoner,

Q. Can you be poſitive, the *Rupert* did not go under the *Marlborough*'s Stern, as well as you?

A. No;—I am poſitive, ſhe went ahead of the *Marlborough*.

Q. Are you ſure, you don't miſtake, with regard to the Hailing the *Rupert?* Was it not the *Rupert* that hailed you; and deſired you to go down and attack the Four Ships coming up? And did not your Captain ſay, With all my Heart: And we put the Helm aweather, and went down together?

A. No; I never heard the *Rupert* hail us.

Q. Did you never hear it in the Ship, among your Ship-mates?

A. No; I never did.

Q. Did you not follow the *Rupert* down, till the *Rupert* brought to?

A. Yes.

Q. Did not the *Rupert* put her Helm aweather again? And did you not follow her?

A. Yes; and in ſo doing, we came upon her Lee-Quarter.

Q. When the *Rupert* brought to, and you brought to with her, upon her Lee-Quarter, as you ſay; Were not all thoſe Five *Spaniſh* Ships right aſtern?

A. Yes; Four of them were right aſtern; but the Fifth was a long Way ahead of the other Four, ſhe being the Ship we firſt engaged.

Q. Pray, recollect your ſelf, and anſwer; If Captain *Williams* and I had gone down farther to the Weſtward than we did: Would not the Four Ships coming up, have weathered us, without altering their Courſe?—Would they not have lain up between us, and our own Line, and ſhut us both out?

A. I think they would; for we were about two Points from the Wind, when we engaged thoſe Ships.

Q. As thoſe Ships were right aſtern of us, Was it poſſible I could come to your Aſſiſtance, till they got your Length, and run up abreaſt of me?—Could I have done it any other way than by lying by, till they came up?

A. I can ſay nothing to that.

Q. Did they not fire at you, ſome conſiderable Time, before they fired at me?

A. Yes; they fired at us; I can't ſay whether they fired at all at you, or not.

Q. Did not the *Cambridge* come down?

A. Yes; after we left the Four Ships, I ſaw her come down.

Q. Did not the *Cambridge* run away, and leave you engaging thoſe Four Ships?

A. No:—She fired Two or Three Broadſides, after we left them.

Q. Did not the *Cambridge* go away, and leave you engaging thoſe Four Ships?

A. No; ſhe came down and engaged thoſe Four Ships, after we had done engaging them; I am poſitive of it.

Q. Did you ſee the *Rupert* fire at any of thoſe Four Ships at any time?

A. I did not obſerve you, we were ſo hotly engaged ourſelves.

Q. Did you not receive a Shot in your Maſt?

A. Yes; we received a Shot in the Centre of our Main-maſt, in the After-Part of it: We ſuppoſed it came from the Sternmoſt of the *Spaniſh* Ships.

Q. Then ſhe muſt be right aſtern of us.

A. Yes; ſhe was then right aſtern of us.

Q. Did you ever ſee the *Rupert* haul off from the Enemy, and leave you?

A. I did not obſerve you haul off, and leave us, becauſe we bore down from you.

Q. You ſay, The fartheſt Diſtance the *Rupert* was from you, was a Quarter of a Mile?

A. Yes; that was the moſt.

Q. Was I right ahead of you?

A. No;—away with our Cat-head a little to Windward.

Q. The Ship you firſt engaged, you allow, I engaged along with you?

A. Yes.

Q. What became of that ſingle Ship?

A. I believe ſhe went ahead, towards her Admiral's Stern.

Q. When you were firing at that ſingle Ship, you ſay, you was a little on my Lee-Quarter?

A. Yes, and aſtern withal.

Q. How far was the *Rupert* from you, when we began to engage?

A. About Half a Cable's Length at firſt; and afterwards, about a Cable's Length.

Q. Was that ſingle Ship you engaged, upon your Quarter, or upon your Beam?

A. At

A. At firſt ſhe was upon our Beam; but afterwards ſhe came more ahead of us.

Q. From what Side of the Deck did Captain *Williams* hail me?

A. From the Larboard-ſide.

Q. Was it from the Gangway, or where?

A. Juſt by the Arm-Cheſt.

Q. Do you think, he hailed ſo loud, as that I, or any of my People, could hear: or did he take a Trumpet to hail me?

A. No; I think he hailed with his Mouth; I am not very certain.

Q. Captain *Williams* has not the loudeſt Voice, at beſt: Do you think, he hailed ſo loud, that I, or any of my Ship's Company, if we had been attentive, might have heard him?

A. He hailed pretty loud.

Q. Did any of thoſe Four Ships ever paſs the *Rupert*?

A. I never obſerved, that they did upon that Tack.

Q. Did any other Ship engage thoſe Four Ships, but the *Royal Oak*, upon the Larboard-tack?

A. The *Cambridge* fired at them.

Q. At what o'Clock did you receive the Shot in the Head of your Main-maſt?

A. I can't rightly ſay; I can't be poſitive what time it was.

Q. When the Admiral wore, before he made the Signal, Was he not to Windward of us? Did he not come down to us?

A. He wore, when he hauled the Signal down.

Q. What Diſtance were we from the Admiral, when he wore?

A. I can't ſay.

Q. Did not the Admiral come down to us, and ſhoot between us and the Enemy, and we wore under his Stern?

A. Yes, you wore under the *Namur*'s Stern; and we followed, and wore under the *Rupert*'s Stern.

Q. Did not the Admiral, *Dorſetſhire*, *Rupert*, *Eſſex*, and *Royal Oak*, engage thoſe Seven Sail of Ships? And did any other Ship beſides us fire at them?

A. No,— not then; nobody elſe did:—I don't remember any other Ships Firing at them.

Then he withdrew.

James Water, Boatſwain's Mate of the *Royal Oak*, called in, and ſworn.

Q. Where was you quartered?

A. At the Weather-Helm.

Q. Declare what you know of the *Rupert*'s Behaviour during the Action.

A. We bore down with the *Rupert*, and brought to with her ſo near, as obliged us to lay all aback, which brought us on her Lee-Quarter: Then we began to engage a *Spaniſh* Ship, which we ſuppoſed to be about Sixty Guns, for better than an Hour: The *Rupert* began to engage her, at the ſame time we did; and continued to engage her, after we had left off. After we had done engaging that Ship, we ſhot nearer the *Rupert*; and Captain *Williams* hailed her, from the Larboard-ſide of the Quarter-deck; and told Captain *Ambroſe*, He thought it was proper to bear down nearer the Enemy; for we were at too great a Diſtance: I ſaw Captain *Ambroſe* myſelf in the Stern-Gallery, on the Starboard-ſide, with a Trumpet; and I heard him ſay, *Royal Oaks*, What do you ſay? Captain *Williams* replied, If he did not bear down nearer the Enemy, he might as well throw the Powder and Shot out of the Ports: Captain *Ambroſe* made no Anſwer, as I heard; but went out of the Gallery: Soon after hailing him, we bore down about a Quarter of a Mile within him, to Leeward; and engaged the Four Ships of the Enemy, for better than an Hour; and then we were obliged to haul from them up to the *Rupert*. I did not obſerve the *Rupert* bear down with us; but ſhe kept to Windward upon our Weather-Bow, as we left her; but I don't remember, whether ſhe engaged the Four *Spaniſh* Ships, or not. Soon after we had hauled off, the *Cambridge* came up, and fired at ſome of thoſe Four Ships, about Two Broadſides; and then ſhe hauled off: The *Rupert* was then upon our Weather-Bow; and, when we ſaw the *Cambridge* begin to engage, our Helm was ordered aweather, in order to go down, and engage thoſe Ships again: But, at that time, the Admiral hauled down the Signal for Engaging, and hoiſted the White Flag at the Fore-topmaſt Head, and ſet his Foreſail, and wore; the *Rupert* wore after him, and we wore after the *Rupert*, and engaged the Enemy in paſſing by them upon the other Tack.

Q. You ſay you engaged one of the Enemy's Ships for ſome time?

A. Yes.

Q. Where was the *Rupert* then?

A. Upon our Weather-Bow.

Q. Did ſhe fire then?

A. Yes, at the ſame Ship.

Q. Do you think her Shot reached the Enemy?

A. I can't ſay.

Q. Do you think ſhe was nigh enough to do Execution?

A. I can't ſay, whether ſhe was, or not; ſhe was upon our Weather-Bow.

Q. How long did you engage that Ship?

A. About an Hour.

Q. How did you loſe her?

A. I can't well tell: I believe, ſhe edged away to Leeward; for we found, that our Shot would not reach her; and then we hauled up to the *Rupert*.

Q. Conſider you are upon your Oath; and obſerve what I am going to ſay to you:—Are you ſure, that the *Royal Oak* hauled up, and hailed the *Rupert*; or did the *Rupert* bear down and hail the *Royal Oak*?

A. We hauled up, and hailed the *Rupert*.

Q. How

Q. How long did you lie by the *Rupert*, before you bore down again?

A. After we hailed her, we bore down directly: We ſtaid no longer than while the Words were ſpeaking.

Q. How long did you lie, before you hailed her?

A. We lay ſome time; I can't tell how long.

Q. What did you bear down to?

A. To the Four Ships of the Enemy coming up.

Q. Did not the *Rupert* then bear down with you?

A. No, I did not perceive ſhe did.

Q. You ſay, You are not certain, whether the *Rupert*'s Shot reached the Enemy, when you engaged the ſingle Ship: Are you ſure the *Royal Oak*'s Shot reached?

A. We were within the *Rupert*. I can't be certain, whether her Shot reached; but I believe ours did.

Q. Did the Enemy's Shot go over you?

A. Yes.

Q. How long did you engage the Four Ships?

A. Above an Hour.

Q. What was the *Rupert* doing all that time? Did ſhe bear down?

A. I did not obſerve, that ſhe bore down; ſhe continued as ſhe was.

Q. Did you ſee the *Marlborough*, when ſhe loſt her Maſts?

A. I did not ſee her, till ſome time afterwards.

Q. What was you doing then?

A. We were engaging thoſe Four Ships.

Q. Did you obſerve the *Rupert* bear down to aſſiſt the *Marlborough*, after ſhe loſt her Maſts?

A. I did not ſee her do ſo.

Q. Are you poſitive the *Rupert* gave no Aſſiſtance to the *Royal Oak*, when ſhe engaged thoſe Four Ships?

A. I did not obſerve ſhe did; I did not take any notice of her, all the time we were engaged with thoſe Ships.

Q. How far was the *Rupert* from you then?

A. About a Quarter of a Mile upon our Weather-Bow.

Q. At the time the Admiral began to wear, Do you remember any thing of the *Rupert* and *Royal Oak* being warmly attacked by thoſe Four Ships?

Witneſs. When?

Court. When the Admiral put his Helm hard-aweather, juſt before he bore away.

A. Yes.

Q. Pray obſerve: At the time the Admiral was wearing, Were the *Rupert* and *Royal Oak* warmly attacked by the Four *Spaniſh* Ships?

A. I don't remember any thing of it then; for we had hauled off a pretty while before that.

Q. When you hauled up to the *Rupert* a Second time, Did you ſee her fire at any Ship?

A. I did not ſee her Firing.

Q. What was ſhe doing, when you hauled up the Second time?

A. She was not then Engaging.

Q. Juſt before you hauled off from the *Spaniſh* Ships, Do you remember how the headmoſt of them bore?

A. The headmoſt was a little before our Beam; and the Second upon the Beam.

Q. Did the *Rupert* lie in ſuch a Poſition, as to be able to fire at the headmoſt of the *Spaniſh* Ships, without doing you any Damage?

A. It is very poſſible ſhe might, if ſhe had bore down nearer to her.

Q. Did you obſerve the *Rupert* to yaw to and fro, to get nearer the Enemy?

A. I did not obſerve her to yaw, or to move half a Point, either one Way or other, from what ſhe was, when we bore down.

Aſked by the Priſoner,

Q. Did you never hear in your Ship, That the *Rupert* hailed the *Royal Oak* to come down with her?

A. I never heard it.

Q. When you ſhot up to the *Marlborough*, Did you go under her Lee, or to Windward of her?

A. Under her Lee.

Q. How far might the *Rupert* be from you then, when the *Marlborough* went ahead of you?

A. I think, better than a Quarter of a Mile; about a Quarter of a Mile.

Q. Did the *Rupert* go under her Lee, as well as you?

A. No; the *Rupert* went ahead, and to Windward of her.

Q. Was you to Leeward of the *Marlborough*, or in a Line with her, when you engaged thoſe Four Ships?

A. We were to Leeward of the *Namur*, when we engaged thoſe Four Ships: She was rather upon our Weather-Bow, if any thing.

Q. How was the *Marlborough?*

A. She was a little upon our Lee-Bow.

Q. How far might you be from the Fireſhip, when ſhe blew up?

A. A great Diſtance;—we muſt be at leaſt Two Miles from her.

Q. When the Admiral altered his Courſe, and put his Helm aweather, I would aſk you, Do you remember, that I ſet my Top-gallant-ſails and Foreſail, to make ſail, to get abreaſt of him into the Line?

A. I remember you ſet your Foreſail; but I don't remember the Top-gallant-ſails; though it might be done.

Q. Did not the *Royal Oak* follow me then?

A. Yes.

Q. After the Admiral brought up, Did not the *Royal Oak* and I continue under the ſame Sail for ſome time, before we brought up?

A. Yes; we both continued to keep Sail, after the Admiral brought up.

Q. After I brought up, Did you ſee what Sail I ſhortened?

A. I ſaw you haul your Foreſail up.

Q. When I brought up, Did not the *Royal Oak* do the ſame?

A. Yes; and we were ſo near, that we were obliged to lay all aback.

Q. Pray, recollect yourſelf: When we brought up ſo, Had we not the Admiral's Maſts in one?

A. I believe, the Admiral was to Leeward of us.

Q. Had not both of us, or had either the one or the other Ship, her Maſts in one?

A. We could not both have her Maſts in one; becauſe we were not in a Line with each other, the *Royal Oak* being a little to Leeward of the *Rupert*; and, I think, the Admiral was a little to Leeward of the *Royal Oak*.

Q. How much farther do you think you might have ſhot to the Weſtward, before you had brought the Admiral's Maſts in one?

A. I believe, about Half a Cable's Length.

Q. At the time we brought to, Did the *Royal Oak* go immediately to work? Or did both the *Rupert* and *Royal Oak* go down ſtill farther, to engage the *Spaniſh* Ship, you ſay, we firſt engaged?

A. We did not bear down farther; but took her in the Station we firſt brought to in, as ſhe came up.

Q. Did you immediately, upon bringing to, begin to engage?

A. No; ſhe was then aſtern; and we waited ſome time for her coming up.

Q. How did the Four *Spaniſh* Ships bear from you, when we firſt brought to?

A. They were aſtern; and to Leeward withal.

Q. Recollect yourſelf: Did not both the one and the other of our Ships bear away, to cut them off as they came up?

A. I don't remember any thing of it.

Q. What became of that ſingle Ship you firſt engaged?

A. She bore away to Leeward, out of her own Line.

A. Did ſhe lie to? Or was ſhe under Sail?

A. I did not obſerve her, after ſhe got out of Gun-ſhot: I only obſerved her, while ſhe was edging away.

Q. How far might be the greateſt Diſtance I was from you that Day?—Were we ever ſo far diſtant, as not to be able to hail each other with a Trumpet?

A. We never were much farther, or nearer, than a Quarter of a Mile from each other.

Q. Were we ſo far aſunder, that we could not hail one another?—What was the ſhorteſt Diſtance we were from each other?

A. The ſhorteſt Diſtance we were from one another was a Quarter of a Mile.

Q. What was the greateſt Diſtance?

A. Not much above a Quarter of a Mile.

Court aſked,

Q. Do you think, the *Rupert*'s Shot did Execution, while ſhe was engaged with the Four Ships?

A. I think, they could not.

Priſoner. He ſaid, He never ſaw me fire at the Four Ships.

Witneſs. If you had fired, your Shot could not have done Execution.

Q. Did you ſee the *Rupert* engage, while you was engaging the Four Ships?

A. I did not.

Priſoner aſked,

Q. When you engaged thoſe Four Ships, Were they right aſtern? Or how were they?

A. The Firſt was before our Beam; the Second upon our Beam; the Third upon our Quarter; and the Fourth in our Wake.

Some of the Members of the Court obſerving among themſelves, That theſe Queſtions were immaterial;

The Priſoner ſaid,

If the Court think proper, I will aſk no more Queſtions.

The Preſident ſaid,

You are at Liberty to aſk any Queſtions.

The Priſoner repeating,

If the Court pleaſe, I'll aſk no more Queſtions;

The Preſident replied,

What have you to do with what we ſay among ourſelves? You are told to aſk your Queſtions.

Q. You received a Shot in the After-Part of your Maſt?

A. Yes.

Q. From what Ship do you imagine it came?

A. I believe it muſt be from the ſternmoſt, as ſhe was in our Wake.

Q. At what time did you receive that Shot?

A. I can't exactly ſay the Time; I believe it might be about Four o'Clock; I can't be poſitive to Half an Hour: We had no Glaſſes going.

Q. Could I get at the Four Ships you engaged, unleſs you had got out of my Way, or before they had ſhot my Length?

A. Very poſſibly; you might have engaged the headmoſt of them, without hurting us.

Q. Did any of thoſe Four Ships ever paſs me?

A. No; never.

Then he withdrew.

The Preſident acquainted the Court, That *Edward Miller*, Gunner of the *Namur*, who had been already examined upon this Tryal, and was not very clear in his Evidence, had requeſted to be called in again, to clear up that Matter; for that he alleged, he did not underſtand the Queſtions put to him; and that thereupon, one of the Members being in a Paſſion with him, he was ordered to withdraw: And propoſed his being called in again, as the Man deſired it, in order to clear his Character.

The

The Court ſeeming to doubt, Whether they could regularly call him in again upon ſuch an Occaſion; the Preſident ſaid, The Proſecutor for the Crown deſires it: And aſked Mr. *Sharpe*, If he did not; and whether it could not be regularly done: Who ſaid, That the Man was very uneaſy, that the Confuſion he was under, when he was laſt examined, ſhould have occaſioned his not being clear in expreſſing himſelf; and was very deſirous, that the Court would give him an Opportunity to explain himſelf: That, to be ſure, the Court had a Right to call a Witneſs in again, to explain any Matter about which they are in Doubt; and that he deſired, he might be called in again.

Edward Miller, Gunner of the *Namur*, called in, and ſworn.

Q. Where was you quartered?

A. On the Lower-Gun-deck.

Q. Declare what you know, with reſpect to the Behaviour of the *Rupert*.

The Judge-Advocate was then called upon to read his Depoſition firſt: Upon which a Debate aroſe among the Members, as to the Regularity of this Proceeding: And the Judge-Advocate being again called upon to read the Depoſition, he objected to it; and obſerved to the Court, That they called the Witneſs in before; and his Depoſition was read; and the Man examined; and turned out of Court, becauſe the Court apprehended, That he had contradicted, if not forſworn himſelf; and that it ſeemed to be a very irregular Proceeding to call him in a Second time, to have his Depoſition read to him, and to go through his whole Examination again. It being then aſked by the Preſident, Who ſaid he had forſworn himſelf? the Judge-Advocate turned to the Minute he had taken at the End of *Miller*'s Examination, upon the Firſt Day of this Tryal; and read it to the Court. But the Minute being objected to, as not the Senſe of the Court; the Judge-Advocate obſerved, That, when ſeveral of the Members expreſſed their Diſſatisfaction with the Man's Evidence, and he was thereupon ordered to withdraw, and nobody oppoſed it, he apprehended, it muſt have been the Senſe of the Court. It was then obſerved, That the Proſecutor for the Crown only deſired to aſk him a Queſtion. The Judge-Advocate ſaid, That, if it was only to explain a Point, about which there was any Doubt, there ſeemed to be no Objection to that.

Court aſked,

Q. Give the Court an Account, How the *Rupert* bore from the *Namur*, at Four o'Clock?

A. She ſtemmed with our Stern, and either lay to, or all aback; both Ships fell off; and, I believe, ſhe was then nearer the Line a great deal, than ſhe was at Half an Hour after Two; not that I thought her then in the Line.

Court to the Priſoner,

Have you any Queſtions to aſk this Witneſs?

Priſoner. I have nothing to aſk a Man whom the Court had ordered to withdraw, for contradicting himſelf.

Then the Witneſs withdrew.

The Judge-Advocate obſerved to the Court, That the former Minute would appear againſt *Miller*; and as he was called in again, in order to clear his Character, if the Court thought his Character was cleared, there ought to be a Minute made of it: Upon which the Court ſeemed to appear ſatisfied with the Explanation that *Miller* had given, of the Point he had now been queſtioned upon.

Lieutenant *Elias Bate*, of the *Ruſſell*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 85.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Upper-deck.

Q. What Diſtance was you from the *Rupert*, when the Action began?

A. I could not tell the *Rupert* then from the reſt: The ſternmoſt Ship of Mr. *Mathews*'s Diviſion might be a League from us, when the Action began.

Q. Do you know, what was the *Rupert*'s Station, in the Line of Battle?

A. I have ſeen the Line of Battle ſince; I had not ſeen it then; and have ſince found her Station to be the ſternmoſt Ship but one, of Admiral *Mathews*'s Diviſion.

Q. Did you ſee the Ship, which you took to be the *Rupert*, fire at the Enemy?

A. I ſaw all thoſe Ships fire about Two o'Clock, ſoon after Mr. *Mathews* began to engage.

Q. Did you ſee their Shot fall ſhort?

A. I did not obſerve their Shot.

Q. Were they within Point-blank?

A. I believe, when they firſt engaged, they might be within random Shot; but I don't believe, they were ever within Point-blank, till they wore to the Northward, after the Admiral wore; then they might be within Point-blank: —They ſeemed then, as if they were, when they paſſed the *Spaniſh* Ships.

Q. Did you ſee the *Marlborough*, when her Maſts went away?

A. I was looking at her then, and took her to be the *Real*; but as ſoon as the Smoke cleared up, I ſaw her Maſts were gone.

Q. Did you ſee any Ship bear down to aſſiſt her?

A. No.

Q. Did

Q. Did you ſee the Fireſhip go down?

A. Yes.

Q. Did you ſee any Ships bear down with her, to cover her?

A. No; I was ſurpriſed to ſee her go down alone: When I ſaw her bear down, I ſaw the Four *Spaniſh* Ships hoiſt their Top-gallant-Sails, and let drop their Foreſails, and haul out their Mizen to croud up to their Admiral; and I ſaw the Three headmoſt of them fire at the Fireſhip; and the Shot of the Two Firſt reached her, and hulled the Flreſhip.

Q. How do you know the Shot hulled her?

A. Becauſe I ſaw them go all round, and over her.

Aſked by the Priſoner,

Q. How many Ships were there aſtern of the *Spaniſh* Admiral?

A. I remember Five particularly; and I have ſome Notion there were Six; but I can't be certain: There was the *Hercules* next to the *Real*; but whether there was another between her and the headmoſt of the Four ſternmoſt Ships, I can't be certain; but I think there was, tho' I know not what became of her.

Q. What Diſtance do you think there was between the *Hercules* and thoſe four ſternmoſt Ships, when the Engagement began?

A. What, between the *Hercules*, and the headmoſt of thoſe Four? I believe, about Four Miles; but I can't be certain of Diſtances.

Priſoner. You ſay, The Ships were not near enough to do Execution;

Q. Did you remark any particular Ship engaging, or firing?

A. There was none of thoſe Four Ships engaged within point-blank Shot.

Q. Were they all firing; or One, or Two, or more?

A. I believe, they all fired at the Beginning of the Engagement; but I did not know which was which, not having ſeen the Line of Battle.

Q. Did you obſerve the Colours of thoſe Four Ships?

A. They were white, to the beſt of my Remembrance; but I forget what Colours we had that Day: They ſhould be the Colour of the Flag; but I don't know what they were; but, I believe, they were Blue.

Q. What Ships could them Four Ships be Firing at, when you ſaw them engaged at the Beginning, when you ſay there were Four Miles between the *Hercules* and the other Four *Spaniſh* Ships?

A. They might be firing at the *Hercules*; or if there was another Ship between the *Hercules* and the Four Ships, it might be at her: I don't know what Ships they were firing at.

Q. Was not the *Torbay* between your Ship and the Vice-Admiral?

A. Yes; in the Afternoon ſhe was.

Q. How did the ſternmoſt of the Four *Spaniſh* Ships bear from you, when Mr. *Leſtock* fired at her?

A. About Two Points before our Beam, and about abreaſt of Mr. *Leſtock*, when he fired at her.

Q. Can you be poſitive, that you ſaw the *Rupert* fire at all?

A. I think, I ſaw them all firing at the Beginning of the Action; but they afterwards ceaſed Firing; but I did not diſtinguiſh the *Rupert* from the others; I did not take ſo much Notice of them.

Q. Did thoſe Four *Spaniſh* Ships ever paſs the Rear of the Centre Diviſion?

A. I think not; I believe the headmoſt did not get more than the Length of the ſternmoſt of the Centre Diviſion.

Then he withdrew.

Lieutenant *Henry Richard Dubois* called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 86.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Quarter-deck, at the Small-Arms.

Q. Did you ſee the *Rupert?*

A. I ſaw thoſe Four Ships to Windward.

Q. Were thoſe Four Ships to Windward of the Line of Battle?

A. All that I obſerved of them was, That I ſaw them to Windward of the Line of Battle; but did not obſerve their Motions: I did not take ſuch particular Notice of them.

Q. Did you ſee them fire?

A. Yes; I ſaw them fire juſt after the Engagement began, when Mr. *Mathews* fired at the *Real.*

Q. What time was that?

A. About Half an Hour after One.

Q. Did you ſee them firing?

A. Yes; but I can't ſay at what.

Q. Did you ſee the Shot fall ſhort?

A. I ſaw the Spray of the Water, where ſeveral of their Shot fell.

Q. Did you ſee the *Marlborough*, when ſhe loſt her Maſts?

A. I ſaw her juſt after they were gone; I ſaw that they were gone.

Q. Did any of thoſe Ships to Windward go down to her Aſſiſtance?

A. No.

Q. Do you think any of thoſe Four Ships were near enough to the Enemy, for their Shot to do Execution?

A. They know beſt; as to my own Part, I believe they were not.

Q. Did you ſee the Fireſhip go down?

A. Yes.

Q. Did any of thoſe Ships go down to cover her?

A. No; I did not ſee any.

Q. What were thoſe Ships doing, at the time the Fireſhip went down?

A. I don't remember, whether they were firing, or not.

Q. You ſay, You can't tell whether thoſe Four Ships were near enough to do Execution? —Was it in their Power to have engaged the ſternmoſt *Spaniſh* Ships coming up, near enough to do Execution?

A. I believe, if they had bore down in a Line with the *Marlborough*, they would have been in a proper Station, to have engaged thoſe *Spaniſh* Ships within a proper Diſtance, as they came up.

Q. If they had bore down ſo in a proper Station, by what Time would the Five *Spaniſh* Ships have been up, for them to have engaged?

A. I can't ſay.

Q. What Wind had you?

A. There was not a great deal of Wind.

Q. How many Knots would a Ship go?

A. According as they can ſail.

Q. How many Knots might your Ships go?

A. About a Knot, or a Knot and an Half.

Q. What Diſtance was the *Rupert* from the headmoſt of thoſe Ships?

A. I can't ſay, exactly.

Q. Did you obſerve any of our Ship to have received ſuch Damage, as to have prevented them going down into the Line?

A. No.

Q. Did you obſerve the *Spaniſh* Ships to bear away from the Fire of any of our Four Ships?

A. No: I obſerved only One to bear away; which was the Ship the *Norfolk* engaged.

Aſked by the Priſoner,

Q. How far diſtant was you from the ſternmoſt Ship of the Four?

A. I don't know: We were about Four or Five Miles from the *Marlborough*; but I did not obſerve your Diſtance.

Q. Could you, at the Diſtance you was off, diſtinguiſh the *Rupert* from any other Ship?

A. No; not to diſtinguiſh her by Name: I could only diſtinguiſh the *Dorſetſhire*, as ſhe was a Three-deck Ship; the others being all Two-decks, I did not know one from the other.

Q. Are you ſure, that they were all Four *Engliſh* Ships?

A. Yes; by their Colours.

Q. What Colour were their Colours?

A. Blue; it was Mr. *Mathews*'s Diviſion: I take them to be Blue.

Q. Were there Four, or Five, of the Enemy's Ship aſtern?

A. I remember ſeeing Four, beſides the *Hercules*; but I am not ſure whether there were more, or not: I don't remember, that there were any more.

Q. Do you remember, whether any of thoſe Four Ships got up ſo far ahead, as to fire at the *Marlborough*, or Fireſhip?

A. When they got on the contrary Tack, they fired, in paſſing.

Q. I aſk you, Whether before the Admiral wore, any of thoſe Four *Spaniſh* Ships got up ſo near, as to fire at the *Marlborough*, or Fireſhip?

A. They got up, to fire at the Fireſhip: I ſaw them fire at her, as ſhe went down.

Q. Did you ſee their Shot reach her?

A. I could not ſee the Shot: I ſaw the Spray of the Water where the Shot fell; and they dropped very near, or cloſe to her.

Q. Did all the Four *Spaniſh* Ships ſeem to go up together?

A. Yes; they ſeemed to be at a proper Diſtance.

Q. Were they in a cloſe Line?

A. Yes; in a cloſe Line.

Q. Do you believe, the ſternmoſt of thoſe Four Sail could have got up cloſe to the ſternmoſt of our Ships, to have engaged with her?

A. I don't believe, ſhe was within Gun-ſhot, to be fired at: She was ſo far to Windward, that the Shot could not reach.

Then he withdrew.

Lieutenant *Thomas Preſcott*, of the *Buckingham*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 87.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Lower Gun-deck; but I was upon Deck the moſt of the Time.

Q. Can you give any Account of the *Rupert*?

A. No more than is contained in my Depoſition: I ſaw her to Windward, lying between the *Eſſex* and *Royal Oak*.

Q. What time was that?

A. About Two o'Clock.

Q. Did you ſee the *Rupert* fire?

A. I don't remember, that I ever did.

Q. Did you ſee her lying to?

A. I don't know any thing of her Lying to.

Q. What Sail had ſhe abroad?

A. I think, her Three Topſails.

Q. Was ſhe in a Line, when you ſaw her?

A. Not at all: She was a great Way to Windward.

Q. What time did you ſee the *Rupert*?

A. About Two o'Clock:—The Admiral was then firing at the *Real*.

Q. Did you ſee the *Marlborough*'s Maſts fall?

A. Yes.

Q. Did you ſee the *Rupert*, or any Ship, go to her Aſſiſtance?

A. No.

Q. Did you ſee the Fireſhip bear down?

A. Yes.

Q. Did you ſee any Ship endeavour to cover her?

A. No.

Q. Did you ever ſee thoſe Four Ships in the Line?

A. I never obſerved them to be in the Line: I always ſaw the *Namur* to Leeward of them.

Q. Did you look at them frequently?

A. Yes.

Q. From the Beginning of the Action to the End, Did you ever obſerve the *Rupert* in a Line with the *Namur*, or *Marlborough?*

A. I never did; I believe ſhe never was in a Line with them.

Q. Did you obſerve thoſe Four or Five *Spaniſh* Ships coming up?

A. Yes.

Q. Was the *Rupert* ever near enough to do Execution upon any of thoſe Ships?

A. No; I don't think ſhe was, while her Head lay to the Southward.

Aſked by the Priſoner,

Q. You ſay, you did not ſee the *Rupert* fire at all?

A. I did not; ſhe lay ſo far to Windward, that I did not take ſo much Notice of her, as if ſhe had been nearer the Enemy.

Q. What Diſtance was the *Rupert* from you?

A. I believe, about Four Miles.

Then he withdrew.

John Pope, of the *Buckingham*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 87.): And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Third Gun on the Upper-deck.

Q. Acquaint the Court what you know of the *Rupert* in the Action.

A. I took notice of the Third Ship aſtern of the *Marlborough*, which was ſaid to be the *Rupert*; and I obſerved her to fire at a great Diſtance, and I was ſurpriſed to ſee her fire at that Diſtance: I ſaw the Third Ship aſtern of the *Marlborough* fire in particular.

Q. Did you ſee her engage any particular Ship, when ſhe fired?

A. No: I could not imagine what Ship ſhe fired at; for I never ſaw any Ship nigh enough to engage her.

Q. What Diſtance was you from the *Rupert?*

A. About Four Miles.

Q. Did you ſee her engage any Ship during the time of Action?

A. She might fire at ſome particular Ship; but I did not ſee her.

Q. What was ſhe doing the whole time? Did ſhe never bear down nearer the Enemy?

A. I never ſaw her bear down near the Enemy; ſhe might bear down, and I not ſee her (for I did not ſee her the whole time): I never ſaw her near enough to the Enemy to engage properly, till after the Admiral wore.

Q. Were any of the Four Ships ever in a Line with the Admiral during the time of the Engagement?

A. They never were, till he hauled off: I don't know what ſome of them might be then; but ſhe never was in a Line with the *Marlborough*.

Q. Did you ſee the *Marlborough*'s Maſts go?

A. Yes.

Q. Did you ſee any Ship go down to her Aſſiſtance?

A. I ſaw no Ship go to her Aſſiſtance.

Q. Did you ſee the Fireſhip go down?

A. Yes.

Q. Did any Ship go down to cover her?

A. I ſaw no Ship go down to cover her; and none of our Ships fired a Gun, after ſhe was got to Leeward, till ſhe was blown up.

Q. What! Was there a general Silence in the whole Fleet, when the Fireſhip was going down?

A. I never ſaw a Ship in the *Engliſh* Fleet fire a Gun, after the Fireſhip got to Leeward of our Line, unleſs the *Neptune*.

Q. That was before the Fireſhip blew up?

A. Yes; but ſhe was a long time going down.

Q. Could you not, from the Beginning of thoſe Four Ships Firing, obſerve any *Spaniſh* Ship that they fired at?

A. They might intend to point their Shot at the headmoſt of the *Spaniſh* Ships; but they were ſo far diſtant, that I can't ſay where they intended them.—The *Spaniſh* Ships were never near enough for thoſe Ships to engage them; for they edged away.

Q. Did none of our Ships pay away after them?

A. No.

Court to the Priſoner,

Captain *Ambroſe*, you may aſk him what Queſtions you have a mind.

Priſoner. I ſhall not aſk him any Queſtions; for he could not diſtinguiſh my Ship from another, when he was Four Miles off.

Robert Waller, Captain's Clerk of the *Buckingham*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 88.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Quarter-deck.

Q. Did you ſee the *Rupert* at any time of the Engagement?

A. I ſaw the Third Ship aſtern of the *Marlborough*, ſaid to be the *Rupert*; but I did not know her Name at that time.

Q. Was ſhe to Windward of the Line?

A. She was to Windward of the Line.

Q. Was ſhe to Windward of the *Namur*, after the *Namur* hauled off?

A. I can't ſay; ſhe might poſſibly be in a Line with the *Namur* then.

Q. Did you ever ſee her fire?

A. Yes.

Q. Was ſhe within point-blank Shot of the Enemy, when you ſaw her fire?

A. I believe, at the Beginning ſhe was not; but what ſhe might be after, I can't ſay.

Q. How long did you ſee her fire?

A. I ſaw her ſeveral times during the greateſt Part of the Action, and I always ſaw her firing.

Q. You ſay ſhe was not within Point-blank at firſt; Was ſhe within Point-blank at the latter Part?

A. I can't ſay poſitively whether ſhe was or not.

Q. Did you ſee the *Marlborough*, when her Maſts went away?

A. Yes.

Q. Did you ſee the *Rupert*, or any of thoſe Ships, bear down to her Aſſiſtance?

A. No.

Q. Did you ſee the Fireſhip, when ſhe bore down to the *Real?*

A. Yes; I ſaw her bearing down.

Q. Did the *Rupert* then attempt to cover her?

A. I did not obſerve her to do ſo.

Q. What Diſtance was you from the *Rupert?*

A. I believe, between Four and Five Miles.

Asked by the Priſoner,

Q. You ſay, You ſaw the *Rupert* firing moſt Part of the Afternoon?

A. Yes; I ſaw her firing ſeveral times.

Q. What was ſhe firing at, when you obſerved her?

A. I imagined, at the headmoſt of the Four *Spaniſh* Ships: She ſeemed to be neareſt to her.

Q. Were thoſe Ships of the Enemy under Sail?—Had they all their Sails out?

A. No: They were ſome Part of the Afternoon under their Topſails only.

Q. Did the *Rupert* ſail in Company with them, and engage them at a great Diſtance?

A. The *Rupert*, at the firſt Part of the Action, was a good Way ahead of them, and to Windward; and I imagined ſhe was lying to: She appeared to me to be lying to; I can't ſay what ſhe was about.

Then he withdrew.

Lieutenant *Charles Baker*, of the *Oxford*, called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 89.): And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Lower-deck.

Q. What Diſtance might you be from the *Rupert*, when the Admiral began to engage?

A. We were about Five or Six Miles from the Admiral: I don't know how far from the *Rupert*.

Q. Did you ſee the *Rupert?*

A. I ſaw all the Ships aſtern of the Admiral, but I could not diſtinguiſh the Ships.

Q. What Ships were there aſtern of the *Marlborough?*

A. The *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*.

Q. What were they doing of?

A. I can't ſay; I did not ſee them engage.

Q. When did you firſt ſee thoſe Four Ships?

A. When the Admiral began to engage.

Q. Did they haul up in a Line with him, or keep to Windward of him?

A. They kept to Windward of him.

Q. Did you ever ſee the *Rupert*, or any of thoſe Ships, engaging from the Beginning of the Engagement, till the Admiral wore?

A. No; I did not ſee them engaged: I ſaw Firing; but I could not diſtinguiſh from what Ships.

Q. Where was your Ship ſtationed?

A. Aſtern of the *Revenge*.

Court. Then you could make but very little Obſervation of the Centre.

Q. Did you ever ſee them during the whole Engagement, till the Admiral wore, in a Line either with the Admiral or *Marlborough?*

A. No; I never did: Whenever I ſaw them, they never were in a Line with the Admiral or *Marlborough*; but always to Windward, till the Admiral wore.

Q. Did they continue in that Poſition, till the Admiral wore at Night?

A. I think they were to Windward all the time.

Q. Did you obſerve the *Marlborough*'s Maſts fall?

A. Yes.

Q. Did you ſee thoſe Four Ships then?

A. Yes; and they were to Windward.

Q. Did you ſee the Fireſhip bear down?

A. Yes.

Q. Did you ſee any of them go down to cover the Fireſhip?

A. No; none at all.

Q. Was it an Obſervation in your Ship at that time, That thoſe Four Ships did not do their Duty?

A. I can't ſay whether there was any Obſervation made of it or no.

Q. You ſay you took notice of thoſe Ships?

A. Yes; I took notice of the Four Ships to Windward.

Q. Do you think, that any of them annoyed the Enemy in the manner they could and ought to have done?

A. No: I don't think they did.

Asked by the Priſoner,

Q. Pray what Ships of the Enemy could thoſe Four Ships have annoyed?

A. All the Ships aſtern of the *Real.*

Q. How many were there aſtern of the *Real?*

A. Six.

Q. Were they all cloſe to their Admiral, or at a Diſtance?

A. Some of them were cloſe to him.

Q. How many were cloſe to their Admiral?

A. There were only Two, that were cloſe to their Admiral.

Q. How

Q. How far diſtant were the Four from the Two?

A. I don't know, directly; but they were at ſome Diſtance.

Q. How do you know, then, that the Ships aſtern could get at them, to annoy them?

A. Becauſe they were ahead of the *Spaniſh* Ships, and the *Spaniſh* Ships ſhot up with them afterwards.

Q. What time do you think they ſhot up with them?

A. I believe, after Three o'Clock.

Q. Was it after the *Marlborough*'s Maſts fell?

A. I believe it was; but I can't be certain.

Q. Did you obſerve, that they paſſed our Ships aſtern of the *Marlborough?* And that they got up to attack the *Marlborough* and *Namur?*

A. I don't know: I could ſee them fire; but I can't ſay whether they fired at the *Marlborough*, or at the Ships aſtern of her.

Q. How many Ships were there between you and the *Rupert?*

A. I don't know.

Q. Was your Ship right in the Line?

A. No; to Windward of the Line: We were upon the *Revenge*'s Weather-Quarter, aſtern of all the Fleet.

Q. Then thoſe Four Ships aſtern of the *Marlborough* muſt be to Windward of you, or you could not have ſeen them: Were they to Windward or to Leeward of you?

A. They were to Leeward of us.

Q. Could you ſee them plain?

A. Yes.

Q. Then you muſt ſee them through the other Ships.

A. So I did.

Then he withdrew.

The Court adjourned till To-morrow Morning, at Eight o'Clock.

The Fifth Day upon Captain AMBROSE'S *TRYAL,*

On Board His MAJESTY'S *Ship the* London, *at* Chatham,

THURSDAY, the 24th *October*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, as were Yeſterday.

The Marſhal brought in the Priſoner.

Mr. *George Bellas* delivered to the Judge-Advocate, to be laid before the Court, a Warrant he had received from the Lords of the Admiralty, to act in Conjunction with Mr. *Philip Creſpigny*, as Proſecutor for the Crown, in the room of Mr. *Sharpe*: And the Judge-Advocate read the ſame to the Court, as follows; *viz.*

" *By the Commiſſioners for executing*
" *the Office of Lord High Admiral*
" *of* Great Britain *and* Ireland, *&c.*
" *To Mr.* George Bellas.

" WHereas, in purſuance of an Addreſs of the
" Houſe of Commons to his Majeſty, That
" he will be graciouſly pleaſed to give Directions,
" that Courts-Martial may be held in the moſt
" ſpeedy and ſolemn Manner, to inquire into the
" Conduct of Admiral *Mathews*, Vice-Admiral
" *Leſtock*, Captain *Burriſh*, Captain *Richard*
" *Norris*, Captain *Williams*, Captain *Ambroſe*,
" Captain *Frogmere*, Captain *Dilke*, in and
" relating to the late Engagement, between his
" Majeſty's Fleet, and the Combined Fleets of
" *France* and *Spain*, off *Toulon*; and of the
" Lieutenants of his Majeſty's Ship the *Dorſet-*
" *ſhire*, then aboard; and of all Officers who
" are, or ſhall be, charged with any Miſconduct
" in that Action; and to try them for the ſame;
" and that his Majeſty would be pleaſed to ap-
" point a proper Perſon or Perſons to collect
" all the Evidence neceſſary for the Tryals of
" the ſaid ſeveral Commanders and Officers;
" and to proſecute them effectually; in order to
" bring thoſe to condign Puniſhment, through
" whoſe Miſconduct it ſhall be found that ſuch
" Diſcredit has been brought upon his Majeſty's
" Arms, the Honour of the Nation ſacrificed,
" and ſuch an Opportunity loſt, of doing the
" moſt important Service to the common Cauſe;
" his Grace the Duke of *Newcaſtle* has ſignified
" to us his Majeſty's Pleaſure, That we ſhould
" give the neceſſary Orders for complying with
" what is deſired by the ſaid Addreſs: And his
" Grace having, by his Letter of the 19th In-
" ſtant, repreſented to us, That his Majeſty's
" Service, at this Time, neceſſarily requires the
" Attendance of Mr. *Sharpe*, one of the Perſons
" appointed by us to carry on the Proſecutions
" againſt the ſaid Officers; and deſired, that we
" would appoint ſome other Perſon to carry on
" the ſaid Proſecutions, in his room; and that
" he may be excuſed from any further Attend-
" ance at *Chatham* for that Purpoſe: We do
" therefore, in purſuance of his Majeſty's Plea-
" ſure, hereby authorize, conſtitute, and appoint
" you, in Conjunction with Mr. *Philip Creſpig-*
" *ny*, to collect all the Evidence neceſſary for
" the Tryals of the aforeſaid ſeveral Com-
" manders and Officers, and to proſecute them
" effectually, agreeable to the ſaid Addreſs of
" the

" the Houſe of Commons: For which, this " ſhall be your Warrant. Given under our " Hands, and the Seal of the Office of Admi- " ralty, this 24th Day of *October*, 1745.

By Command of their Lordſhips, *Sandwich.* *G. Anſon.* *H. Legge.*

Tho. Corbett.

Then the Witneſſes were ordered to be called in.

Joſias Fownes, Maſter of the *Oxford*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 89.): And he declared the ſame to be true.

Q. When the Admiral firſt began to engage, What o'Clock was it?

A. Something paſt One.

Q. Did you ſee the Four Ships to Windward?

A. Yes; but I could not diſtinguiſh one from another.

Q. What Ships were they? Name them.

A. The *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, as I ſaw them named in the Line of Battle afterwards; for it was not put up then.

Q. You ſaw the *Namur*, when ſhe hauled up to engage?

A. Yes.

Q. Were thoſe Ships in a Line with her?

A. No: I don't think they were.

Q. Were they to Windward of the Admiral?

A. Yes.

Q. Did you ſee the *Marlborough*, when ſhe loſt her Maſts?

A. I did not ſee them go away; I ſaw her, after they were gone.

Q. At what time was that?

A. Near Four o'Clock.

Q. Did you ſee the *Rupert*, or any other Ship, to Windward, bear down to aſſiſt her?

A. No; I ſaw none bear down to aſſiſt her.

Q. Where was the *Oxford* ſtationed?

A. She was ſtationed quite in the Rear, upon the *Revenge*'s Quarter.

Q. What Diſtance was you from the *Rupert*?

A. About Three or Four Miles:—It might be more; it might be Five Miles, for what I know.

Q. Did you ſee the *Rupert*, and thoſe Ships to Windward, fire?

A. Yes.

Q. At what time?

A. I believe, about Two o'Clock.

Q. What Diſtance were they then from the Enemy?

A. I am not certain; but, I believe, about a Mile and an Half, by the great Opening I obſerved between them and the Enemy.

Q. You mean from the Ships they fired at?

A. I mean from the Four ſternmoſt Ships coming up.

Q. What was the firſt time you ſaw thoſe Four Ships to Windward fire?

A. I don't juſtly know; but there were other Ships that anſwered their Fire.

Q. Did you ſee the Fireſhip bear down to the *Real*?

A. Yes.

Q. Did you ſee any of thoſe Ships go down to cover her?

A. No.

Q. Did any of thoſe Ships go down to aſſiſt the *Marlborough*?

A. No.

Q. Did you ever obſerve any Ship between you and the *Marlborough*, in a Line with the *Marlborough*?

A. No; I never ſaw any Ship ſo far to Leeward as the *Marlborough*, till the Admiral wore.

Q. How did you diſtinguiſh the Four Ships you call the *Rupert*, and the others, from the Ships in the Van of the Vice-Admiral's Diviſion?

A. I took them to be ſo, by being ſo far to Windward, and having Blue Colours.

Q. You ſaw the Four Ships of the Enemy coming up?

A. Yes.

Q. Did you ſee them come up ſo far ahead as the *Rupert*?

A. I don't know, that they were ſo far ahead as the *Rupert*.

Q. Who did they point their Guns at?

A. I don't know.

Q. Did you obſerve any of the Four Ships, with Blue Colours, ſo far to Leeward, as to be in a Line with the Enemy's Four Ships coming up?

A. No; I did not.

Q. Do you think ſuch a thing might have happened, and you not ſee it?

A. No: If they had been ſo far to Leeward, I muſt have obſerved it.

Q. Did you ſee the Fireſhip bearing down?

A. Yes; before ſhe blew up.

Q. When you obſerved the Fireſhip diſappear, In what Poſition were the Four Ships with Blue Colours then?

A. I can't ſay, that I obſerved them particularly at that time; but ſoon after I ſaw them to Windward.

Q. You obſerved thoſe Four *Spaniſh* Ships coming up: Did you obſerve the Headmoſt of them fire at the Fireſhip?

A. I did not obſerve them.

Q. From the Beginning of the Engagement to the End, Did you ever ſee any of thoſe Four Ships near enough to do Execution upon the Enemy?

A. I think, not, till they wore: If they were at any time, it muſt be then.

Q. Did you ſee any Damage that had happened to any of thoſe Ships, to prevent their Bearing down more to Leeward?

A. I did not ſee any; but, if they received Damage, I was at ſo great a Diſtance, that I might not ſee it.

Asked by the Priſoner,

Q. Pray, what you ſaw of thoſe Four Ships, Was it with a Glaſs, or your naked Eye?

A. Sometimes with my Eye, and ſometimes with my Spy-glaſs.

Q. How many Ships were between you and Admiral *Mathews?*

A. I can't recollect.

Q. Do you believe, it was poſſible, That any one Ship ahead of you, in Mr. *Mathews*'s Diviſion, might bear down, and be in a Line with Mr. *Mathews*, and you not ſee it?

A. I think not; I don't know how they could: — But, I can't ſay poſitively, but it might be ſo.

Q. What Diſtance was you from the *Marlborough* and *Namur?*

A. I believe, Five or Six Miles.

Court aſked,

Q. As you looked at the *Marlborough*, could you not diſtinguiſh, if there was any Ship between you and the *Marlborough*, in a right Line with her?

A. No; there never was.

Priſoner aſked,

Q. Was your Diviſion in a Line with Admiral *Mathews?*

A. I can't ſay the Poſition of our Ships then: — We bore down to the *Revenge*, and were upon her Larboard-Quarter; we never were aſtern of her.

Q. When you was there, Was you then in a Line with the Admiral, or to Windward of him?

A. I can't ſay; I did not always obſerve: — Ships, Half a Mile to Windward, may ſeem to be in a Line; — ſometimes by both falling off together; but then, upon coming to again, they will not be in a Line.

Q. Was I then to Windward of you?

A. Yes; I never ſaw you, but you was always, I think, to Windward of the *Oxford*; and ſo were all thoſe Four Ships.

Then he withdrew.

Lieutenant *Michael Kearney*, of the *Romney*, was called in, and ſworn.

His Depoſition read (as in Captain *Burriſh*'s Tryal, Page 90.): And he declared the ſame to be true.

Q. Did you ſee the *Rupert* ever engage?

A. I remember, I ſaw a Firing from thoſe Ships to Windward.

Q. At what time was that?

A. About Two o'Clock; between Two o'Clock, and the Time the *Marlborough*'s Maſts went away.

Q. What Diſtance were they from the Enemy? Were they within point-blank Shot?

A. No.

Q. How far do you think they were to Windward of the *Namur* and *Marlborough*, when they engaged?

A. I can't ſay.

Q. Did you ever ſee them to Windward of the Line?

A. I remember ſeeing them to Windward of the Line.

Q. Did you ever ſee them to Leeward of the Line?

A. No, never, till after the Admiral wore.

Q. You ſaw the *Marlborough*, when ſhe loſt her Maſts?

A. Yes.

Q. Did you ſee the *Rupert*, or any of thoſe Four Ships, bear down to give her Aſſiſtance, after her Maſts were gone?

A. No, never.

Q. Did you ſee the Fireſhip bear down?

A. Yes.

Q. Did you ſee the *Rupert*, or any of thoſe Ships to Windward, bear down to cover the Fireſhip, when ſhe was going down to the *Real?*

A. No.

Q. What Ship was the *Romney* ſtationed abreaſt of; or, Where was ſhe ſtationed?

A. She was ſtationed between the *Elizabeth* and *Buckingham.*

Q. Was you to Windward, or to Leeward of them?

A. We were a little to Windward of them.

Q. Could you ſee thoſe Four Ships to Windward of the Admiral, during the Action?

A. Yes; I ſaw them to Windward of the Admiral.

Q. Was it during the whole Action, that you ſaw them to Windward?

A. Yes, always, during the Action.

Q. Did you ever obſerve any of thoſe Four Ships aſtern of the *Marlborough*, near enough to the Enemy to do Execution, before they wore?

A. No.

Q. Might not the *Rupert* have been ſo far to Leeward, and cloſely engaged with the *Spaniſh* Ships, and you not perceive it?

A. No, I think not.

Q. From the Beginning of the Admiral's Engaging, to the latter End of the Engagement, while their Heads lay to the Southward, How did your Ship's Head lie, with reſpect to the Admiral?

A. To Windward of the Admiral: I ſaw the Admiral Two Points upon our Starboard-Bow, or more.

Q. Did the Admiral's Maſts appear to you to be in one, in that Situation?

A. No; it could not be; for we were to Windward of him.

Q. How might the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*, bear from you, the moſt Part of the Engagement?

A. For the greateſt Part, neareſt right ahead, or rather, to Leeward, if any thing.

Q. What time did the headmoſt of the Five *Spaniſh* Ships paſs by you?

A. They were ahead of us, from the Beginning; and we came up with them, till their Admiral appeared to be in Danger; and they crouded to join him; but, about the Time of leaving off the Engagement, the ſternmoſt of them was about upon our Beam.

Q. How far do you think, the headmoſt of thoſe *Spaniſh* Ships was ſhot up with the *Rupert*, when the Admiral wore?

A. About the Time when they ſaw the *Spaniſh* Admiral in Danger, and the Admiral wore, the headmoſt was then near abreaſt of the *Rupert*, or about abreaſt of her.

Q. Do you mean, when the *Spaniſh* Admiral wore, or Our Admiral wore?

A. When Our Admiral wore.

Q. Did any one of them ever paſs by the *Rupert?*

A. No; the headmoſt might be near up with her; but, I believe, none paſſed her.

Q. At the time the headmoſt of thoſe *Spaniſh* Ships was got abreaſt of the *Rupert*, Do you think the *Rupert* was then within point-blank Shot, or near enough to do Execution?

A. No; ſhe was never within Point-blank, before the Admiral wore.

Q. Did you ſee any of the *Britiſh* Ships aſtern of the *Marlborough*, in a Line with the *Marlborough*, when that headmoſt Ship was abreaſt of the *Rupert?*

A. No.

Q. How did you know the *Rupert* was one of thoſe Four Ships?

A. From the Line of Battle.

Q. Do you apprehend, that the *Rupert* and *Royal Oak*'s Fire obliged thoſe *Spaniſh* Ships to bear away, or hindred them cloſing with their own Admiral?

A. At one time, I ſaw the ſecond Ship aſtern of the *Real*, with her Top-gallant-ſails ſet, going Four or Five Points to Leeward of her Admiral.

Q. At what time was that?

A. In the firſt Part of the Action.

Q. Did you ſee thoſe Four Ships beat out of their Line, by the Fire of the *Rupert* or *Royal Oak*, or hindred from going to the Relief of their Admiral?

A. No, not all: I don't think they were hindred at all from going to the Relief of their Admiral: I did not ſee them bear away from the Fire of the *Rupert* or *Royal Oak*.

Priſoner aſked,

Q. What Diſtance might you be from the *Rupert?*

A. About Four Miles.

Q. What was the neareſt, and the fartheſt Diſtance, that you ſaw her?

A. It is hard to judge of Diſtances: I believe, you was about Four Miles from us, when the Admiral began to engage; and about Five Miles, when he left off.

Court. If you are not ſure, ſay, You can't tell.

Witneſs. As I take it, that was the Diſtance.

Q. Can you be poſitive, that you could ſee at Five Miles Diſtance, and in the Evening, and tell whether Ships are in Point-blank, or not?

A. The material Part of the Action was before the Evening.

Q. Pleaſe to anſwer my Queſtion, Whether, juſt before the Admiral wore, you could, at Five Miles Diſtance, tell, whether any Two Ships, that were engaging, were not within a proper Diſtance to do Execution?

A. I can be poſitive of it, that, from the Beginning of the Engagement, till the Time the Admiral wore, they were not near enough to do proper Execution.

Q. By the Word They, do you mean the *Rupert*, and the reſt of the Four Ships aſtern of the *Marlborough?*

A. Yes.

Q. Could you particularly diſtinguiſh the *Rupert* from any other Ship, at that time?

A. No.

Q. Do you think ſhe was one of the Four Ships?

A. Yes.

Q. Were all thoſe Four Ships in a Line together with each other?—Were none of them to Leeward, or to Windward?

A. I can't ſay, whether they were in a direct Line with each other, or not.

Q. You ſay you was to Windward a little of your own Diviſion; and that the Four Ships were right ahead of you; and, in Courſe, I muſt be to Windward of the Whole: I muſt be to Windward of Mr. *Mathews*'s Diviſion, and your Diviſion.

A. You was rather to Leeward of the Ship I was in; and we were to Windward of our Diviſion, if any thing.

Q. Was I ſo far to Leeward of you, as to be in a Line with your Diviſion?

A. If you was to Leeward of us, you was not in a Line.

Court aſked,

Q. Was he to Windward, or to Leeward, of your Diviſion?

A. He was to Leeward of our Diviſion, if any thing.

Priſoner aſked,

Q. When you ſaw the Fireſhip go down, paſs the *Marlborough*, and go clear to the *Real*, Did you ſee any of the *Spaniſh* Ships fire at her?

A. Yes, I did ſee ſome of the *Spaniſh* Ships fire at her.

Q. Did any of their Shot reach?

A. Some of them, I believe, might reach: I ſaw a great many of them fall into the Water round her; and, no doubt, ſome of them fell on board.

Q. Did you ſee no *Engliſh* Man of War engaging thoſe *Spaniſh* Ships at that time?

A. I don't remember to have ſeen any Ship engaging them then.

Then he withdrew.

John Coultas, Maſter of the *Romney*, was called in, and ſworn.

His Depoſition was read (as in Captain *Burriſh*'s Tryal, Page 90.): And he declared the ſame to be true.

Q. Whereabouts did you lie in the *Romney?*

A. The

A. The Fourth or Fifth Ship aſtern of Admiral *Leſtock*: We were the next Ship aſtern of the *Buckingham*.

Q. In what Poſition did you lie from Vice-Admiral *Leſtock*?

A. In a Line with him: We ſometimes kept the *Marlborough* right ahead; and ſhe was ſometimes a little on our Larboard, and ſometimes a little on our Starboard-Bow.

Q. Did you, in general, that Day, direct your Courſe towards the *Marlborough*, endeavouring to keep her right ahead?

A. Yes; all the Day.

Q. And how did you obſerve the Four Ships ſtationed aſtern of the *Marlborough*?

A. Three of them were farther to Windward than the Fourth: The ſternmoſt of the Four, was more to Leeward than the others.

Q. How did they lie from you?

A. Upon our Weather-Bow.

Q. How many Points upon your Weather-Bow?

A. I can't ſay.

Q. Where was you?

A. I was ſometimes upon the Forecaſtle, and ſometimes upon the Quarter-deck.

Q. Did you obſerve thoſe Four Ships to fire?

A. I can't ſay any thing to any particular Ship: I ſaw ſome of them fire; whether all, or no, I can't ſay; for we were at a good Diſtance; we were Six Miles from the *Marlborough*; and we could not be leſs than Three or Four from the ſternmoſt of thoſe Four Ships: I am not capable of judging to a Mile: No Man can do that, eſpecially ſo long ago.

Q. What Ships do you apprehend they fired at?

A. I think, at the headmoſt of the Four *Spaniſh* Ships, aſtern of the *Spaniſh* Admiral; or, perhaps, at the Second aſtern of the *Real*.

Q. You imagine ſo.

A. I can't ſay which; but I judge ſo: There was a large Opening between the Four *Spaniſh* Ships and the Second aſtern of the *Spaniſh* Admiral, of Two Miles, at leaſt.

Q. Do you think, that, when they fired at the one or the other of thoſe Ships, they were near enough to do proper Execution?

A. No, I don't think they were; for I ſaw the Shot, both from them and the Enemy, fall ſhort.—They were not near enough, in my Opinion.

Q. Did you obſerve the *Marlborough*'s Maſts fall?

A. Yes.

Q. At what time was that?

A. By our Watch, it was Half an Hour after Three: I know, becauſe I looked, that I might mark the Log-Book.

Q. Did you obſerve the Four *Engliſh* Ships at that time?

A. I did.

Q. What Poſition were they in then?

A. They were then much in the ſame Situation as before.

Q. Did you ſee the Fireſhip bear down?

A. Yes, I ſaw her bear down; and I alſo ſaw her blow up.—I was then upon the Forecaſtle.

Q. Did you obſerve, whether any of our Four Ships were then engaged?

A. I did not obſerve, that any of them were.

Q. Did you obſerve any of thoſe Four Ships bear down, and make Sail to cover the Fireſhip, upon her Bearing down?

A. No, I did not obſerve that any of them did: I did not obſerve any ſuch thing; but I can't ſay, that none of them did.

Q. Did you obſerve the *Marlborough*'s Maſts go away?

A. Yes.

Q. At what time?

A. At Half an Hour after Three.

Q. Did you ſee any of our Four Ships bear down, to give the *Marlborough* Aſſiſtance?

A. Poſſibly they might; but I did not ſee any.

Q. Did you obſerve any of the Four ſternmoſt Ships of the Enemy fire at the Fireſhip, before ſhe blew up?

A. Yes; I ſaw the headmoſt, and the Second, I believe, fired at her; and their Shot flew about her; but, whether they did Execution, or no, I can't ſay.

Q. If our Four Ships had bore down in a Line with the *Namur* and *Marlborough*, Do you think they would not have been in a Poſition to have engaged thoſe Four *Spaniſh* Ships properly, and prevented their getting up to the Fireſhip?

A. Yes, to be ſure.

Q. Are you poſitive, that none of the Four Ships aſtern of the *Marlborough* were never, during the Action, ſo far to Leeward as the *Namur*?

A. I never ſaw them ſo far; but I can't ſay, they were not; for I was at a great Diſtance.—Things that I ſaw, I can ſpeak juſtly to; but, Things that I did not obſerve, I will not ſpeak any thing to.

Q. Did you ſee any *Spaniſh* Ships in Tow the next Day, or diſabled?

A. I think, I ſaw the *Real* in Tow; it was a large Ship.

Q. Did you ſee any others?

A. No, I did not.

Q. Was it the *Real* you ſaw in Tow?

A. It was a large Ship; the Fore-topmaſt was gone, and the Main-yard was down.

Q. You ſay there was a great Opening, of Two Miles, between the *Spaniſh* Ships: Did you obſerve, what time thoſe *Spaniſh* Ships might draw abreaſt of our Four ſternmoſt Ships; or did they draw abreaſt of them?

A. I can't tell.

Q. Did you think, that any of our Four Ships did engage, during any Part of the Day, as *Engliſh* Men of War ought to engage?

A. No, I don't think they did.

The Priſoner being told, He might ask the Witneſs what Queſtions he thought proper; he ſaid, As he does not ſwear any thing poſitive againſt the *Rupert* in particular, I ſhall not aſk him many Queſtions.

Aſked by the Priſoner,

Q. Do you know where the *Rupert* was ſtationed?

A. I do not.

Q. Have you been at *Portſmouth?*

A. Yes.

Q. Have you been upon the Battery there?

A. Yes.

Q. How far is it from thence to *Spithead?*

A. I can't tell the Diſtance; I have not been there theſe Twenty Years.

Q. Is it Three or Four Miles?

A. I believe, it may be thereabout.

Q. Will not Ships, at Three or Four Miles Diſtance, appear to be at a great Diſtance from each other; and, when you come near them, you have found them only at a proper mooring Diſtance? Speak now, as a Seaman: Will not Ships, at Three or Four Miles off, appear to be at a much greater Diſtance from each other, than they really are?

A. It may be ſo; but I only ſpeak as to the Ships not being in the Line.

Q. How, then, do you judge of my Diſtance from the Enemy?

A. By the Shot falling ſhort.—I ſaw our Four Ships Shot, and the Enemy's Shot, fall ſhort of each other.

Priſoner. It is a very material Queſtion; and I hope, I ſhall make it appear ſo to the Court.

Then the Witneſs withdrew.

Then the Proſecutor for the Crown deſired, That *William Jude*, late Gunner of the *Dorſetſhire*, might be called in: And the Judge-Advocate acquainted the Court, That there were Three Perſons to ſpeak to his Character, if the Court required it: But the Court did not think it neceſſary.

William Jude, late Gunner of the *Dorſetſhire*, was called in, and ſworn.

Q. Declare what you know, of the *Rupert*'s Behaviour, in the Day of Engagement.

A. I know nothing of the *Rupert*, in particular, to ſay, it was ſhe, and no other: But, when I was ſent for, by Captain *Burriſh*, to lay the Guns down, our Shot falling ſhort of the Enemy, which might be after we had fired Three or Four times; I then looking towards Captain *Burriſh*, my Eye then canting upon the Larboard-Quarter, I ſaw Two Ships; I might ſee Three, but Two I am certain of; and I ſaw a Smoke ariſe from thoſe Ships. Captain *Burriſh* ſaying to me, That our Shot fell ſhort, and I muſt lay the Guns down; I ſaid, That we were too far off the Enemy. I ſeeing thoſe Ships, and the Smoke, I turned my Face to the Starboard-ſide, and ſays, Here's Fighting, indeed! Captain *Burriſh* heard me ſay ſomething, and ſays, What do you ſay, Gunner? I ſays (then I was looking over the Starboard-ſide), Here's Fighting, indeed! We are too far off. Look! Look! Then I ſaw ſome Shot ſtrike the Water, aft, upon the Starboard-Quarter, aſtern of the Ship: I ſaw Smoke, at the ſame time, from the Enemy; and, by the Breach that the Shot made in the Water, I did believe, that the Shot did but juſt croſs one another. Then I turned away, having got my Orders, and went about my Buſineſs. Thoſe Shot which I ſaw from our Ships, came either from the *Eſſex*, or *Rupert*, or both; that is, they came from one, or both, the Two Ships, next aſtern of the *Dorſetſhire*; for I did not know their Names, till afterwards.

Q. You ſay, You ſaw the Shot come from one or both thoſe Ships; Can you be ſure, they came from both?

A. I am not ſure—For had I turned a Quarter-minute Glaſs, it would not have run out, while I was upon Deck.

Q. Can you ſay, What Ships of the *Spaniards* they were firing at?

A. I can't ſay; for the Smoke of our Guns blinded me.

Q. Was it at any of the Four *Spaniſh* Ships coming up?

A. I can't think, it was at them; it was more likely to be at the *Hercules*.

Q. Were they within random Shot?

A. Yes; to be ſure, they muſt have been within random Shot: But the Roll of the Ship might occaſion their Shot to fall ſhort, in the Water. But then it was a Mock-fight; for they were upon our Weather-Quarter, a Point or Two; and we were a Mile from the Enemy, if it was an Inch.

Q. Were they within a proper Diſtance to do Execution upon the Enemy, when you ſaw thoſe Shot fall ſhort in the Water?

A. No; they were not: We were a Mile off, and they were upon our Weather-Quarter.

Q. How much were they upon it?

A. They might be a Point, or Two, more or leſs.

Q. Was you, then, to Windward?

A. Yes.

Q. In what Part of the Ship was you, when you canted your Eye upon the Larboard-Quarter?

A. At the Entrance of the Quarter-deck, upon the Starboard-ſide.

Q. Are you ſure, that the Breach, you ſaw in the Water, was occaſioned by Shot? Might it not have been by the Current, or ſomething elſe?

A. No—I could plainly ſee the Difference between the Current, and the Shot making a Breach in the Water: I am certain, it was occaſioned by Shot.

Q. You ſay, You went down to your Quarters: Did you ever come upon Deck again, before the *Marlborough* loſt her Maſts?

A. I did not; nor till Captain *Burrish* sent for me, after the *Marlborough* had loſt her Maſts.

Q. Where did you find Captain *Burrish*, when you came up to him, that Second time, after the *Marlborough* had loſt her Maſts?

A. Amidſhips, upon the Quarter-deck, before the Bittacle.

Q. Did you then obſerve the Poſition of our Ships to Windward, and the Poſition of the Enemy?

A. No; I did not—It is mighty poſſible, I might ſee a great many Ships, all round me.

Q. Did you obſerve our Three Ships to Windward, that were ſtationed aſtern of you?

A. I can't ſay, I did not ſee them; but I did not take any notice of them: For Captain *Burrish* telling me, there was no Powder filled, ſurpriſed me.

Q. How long did you then continue upon Deck?

A. It could not be long: It might be a Minute, or two.

Q. You ſay, You ſaw the *Marlborough* had loſt her Maſts—Did you ſee any Ship, then, aſſiſting the *Marlborough?*

A. No—The *Marlborough* was then between us and the Enemy.

Q. You was, then, in a very proper Poſition, to make an Obſervation—Did you ſee any Ship going to the Aſſiſtance of the *Marlborough?*

A. No; I can't ſay I did.

Q. While you was upon Deck, that Second time, Did you ſee any Ships fire, beſides the *Marlborough?*

A. I can't ſay.

Q. Did you come upon Deck again, after that Second time?

A. Yes; juſt after the Conſultation was with the Lieutenants: But I did not ſtay there, nor did I make any Obſervations, while I was there.

Q. Do you know any thing of the Fireſhip's blowing up?

A. I ſaw the Smoke of her, upon the Surface of the Water, out of the Larboard-Bow Port, upon the Middle-Gun-deck.

Q. What, juſt as ſhe blew up?

A. No: I only ſaw the Smoke upon the Water.

Q. Did you, at that time, obſerve to have ſeen the *Rupert*, *Eſſex*, or *Royal Oak?*

A. No; I did not.

Q. Did you, at any time of that Day's Action, take any further notice of thoſe Three Ships aſtern of you, after your firſt coming upon Deck?

A. No.

Q. What Space of Time was it that you ſaw thoſe Three Ships?

A. I believe, it was not above a Quarter of a Minute.

Priſoner asked,

Q. At the Time you obſerved them, for that Quarter of a Minute, Were thoſe Three Ships lying to, or under Sail?

A. I really can't ſay: I was only a Quarter of a Minute there, in all; and Part of that time I was looking over the Starboard-ſide.

Then he withdrew.

The Proſecutors, in Behalf of the Crown, then acquainting the Court, that they had gone through all the Witneſſes in Support of the Charge; One of the Members moved, That all the Witneſſes, in Behalf of the Priſoner, might be called into Court; and that the Clauſe in an Act of Parliament, in relation to Perjury, which was read the Firſt Day of this Tryal, might be again read to them: Which the Court agreeing to be very proper, the Witneſſes were called in, accordingly; and the Clauſe read to them: And then they withdrew.

The Priſoner then deſired of the Court, That he might be indulged, to have a Manuſcript of the *Rupert*'s Tranſaction, on the Day of Engagement, read, before he called in his Witneſſes; which, the Court told him, they had no Objection to; and that he might deliver it to the Judge-Advocate: Which he did; and deſired, that he would read it. But Mr. *Bellas*, One of the Proſecutors for the Crown, objected to it; and, quickly after, delivered a Letter to the Judge-Advocate, as follows; *viz.*

" *SIR*,

" AS a Proſecutor, in Behalf of the Crown, I " muſt beg Leave to object to Captain *Am-* " *broſe*'s delivering into Court any Writing, " wherein his Defence may be contained; inaſ- " much as it is giving the Priſoner the fulleſt " Aſſiſtance of Counſel; and the Crown, by " the Determination of the Court, as I appre- " hend, have no ſuch Privilege. I beg Leave " to obſerve, That Captain *Williams*'s Caſe was " different from the preſent: For that the Court, " obſerving that Captain *Williams* had bad " Eyes, indulged him with a Perſon to take his " Notes, and the Judge-Advocate to read them. " If Captain *Ambroſe* will make uſe of his Notes " himſelf, I ſhall not object; but ſubmit to the " Court, Whether the allowing a Priſoner to " deliver, in Writing, any Notes not taken by " himſelf, may not have a bad Tendency, and " introduce the Art of Lawyers, where you " have denied their Appearance.

" *I am*, &c."

The Judge-Advocate read the ſame to the Court: Upon which the Marſhal was ordered to remove the Priſoner; and the Court was cleared.—The Court then conſidered the Priſoner's Requeſt, and the Objection made by the Proſecutor; and unanimouſly agreed, That the Priſoner might be allowed to

to deliver what he had to offer in his Defence, in Writing. And then all Parties being again admitted, the Profecutor and the Priſoner were acquainted with the Court's Reſolution.

The Priſoner deſired, That the Paper he had delivered in, might be now read; and, if any thing further ſhould occurr, which he ſhould have Occaſion to remark, he hoped the Court would indulge him in it: And he was told, That, to be ſure, it was but reaſonable.

Then the Judge-Advocate read the Manuſcript the Priſoner delivered in, as follows; *viz.*

" *SIR*,

" I AM now to anſwer the Charge, which has " been brought againſt me in this Honour- " able Court. I intend to do this, by ſpeaking " to the Articles, as they ſtand in that Charge, " and with as much Brevity, as poſſible.

" The Charge conſiſts of Five Articles. By " the Firſt, I am accuſed of having kept back " from the Fight, with lying to Windward, out " of my Station, and out of Point-blank, du- " ring all, or the greater Part, of the Engage- " ment; and with having uſed no Endeavours " to engage the Enemy.

" By the Second, I am accuſed of having " fired Two hundred, at leaſt One hundred " Shot, when I was out of Reach of the Enemy " on a Point-blank; and many of them which " could not reach at Random.

" By the Third, I am charged with Neglect " of Duty, in not cloſing the Line, when the " *Dorſetſhire* and *Eſſex* kept to Windward; " and of with-holding my Aſſiſtance from the " *Namur* and *Marlborough*, though capable of " affording it to them.

" By the Fourth, I am accuſed of not hav- " ing covered and conducted the *Anne Galley* " Fireſhip, when the Signal was made by Ad- " miral *Mathews*, for her Bearing down upon " the *Real*; by which Neglect of my Duty, " although I was not, at that time, engaged, " the ſaid Fireſhip was deſtroyed, without doing " any Execution upon the Enemy.

" As to the Fifth, I apprehend, it is the " common General Article.

" To the Firſt Article, I may juſtly affirm, " That, upon ſeeing the Admiral's Signal, I " immediately obeyed it, by getting into my " Station in the Line, and continuing there, or, " rather, to Leeward of it; but never to Wind- " ward of it, at any time, during the Engage- " ment.

" That I was warmly engaged, firſt, with " Five of the Enemy's Ships, in the Rear, " within Half-Gun-ſhot; and, afterwards, when " the Admiral called me off from that Engage- " ment, I, in Conjunction with him, engaged " the *Real*, the *Hercules* her Second, and the " above-mentioned Five Ships, which had joined " their Admiral, until it was dark—By my Sta- " tion, in the Line of Battle, I was to be ahead " of Admiral *Mathews*, on the Starboard-tack; " but ſeeing him in Danger of being cut to " pieces, I went, immediately, to his Aſſiſtance, " and was the Second Ship aſtern of him; " Which will ſhew, I neither kept back, nor " feared the Enemy's Shot.

" I admit, that when the *Namur* and *Marl-* " *borough* firſt began the Engagement, I was " out of Point-blank; but ſurely this cannot " be imputed to me as a Crime, ſince it was " intirely owing to my being then in the Sta- " tion appointed for me in the Line of Battle, " and to its being impoſſible for me to ap- " proach nearer the Two Ships of the Enemy, " *viz.* the *Real*, and her Second, which were " ahead, without breaking the Line, and put- " ing the *Rupert* between Two Fires; either of " which I humbly apprehend to be very incon- " ſiſtent with my Duty to have done: And the " Five Ships of the Enemy, which were then about " the Diſtance of Four or Five Miles on my Star- " board-Quarter, not having come up to cloſe " their Line, I could not then get at, without " coming to my Starboard-tack, turning my " Stern to my Admiral, and running away " from him: This was then my Situation, and " this made me an unhappy Spectator for near " Three-quarters of an Hour, before I could " get at the headmoſt of the ſaid Five Ships, " which were coming up aſtern.

" To the Second Article, I take leave to " ſay, That I did not fire a ſingle Shot, when " the *Namur* and *Marlborough* engaged the " Enemy, being ſenſible it would do no Exe- " cution: And although I am charged with Fire- " ing upon the Enemy, when out of Point- " blank; yet this is intirely groundleſs, accord- " ing to what I have ſaid, under the fore- " going Article; and will, I truſt, appear to " be ſo, by the Evidence to be given to this " Court: I may truly affirm, that I ordered a " Gun from each Deck to be fired with round " Shot, that I might thereby know, whether I " could reach the Enemy, though, at the ſame " time, theirs went far beyond me, and did " me conſiderable Damages: My Guns were " loaded with Round and Grape, becauſe I did " not intend to fire till I got cloſe on board " of them; but, finding their Shot to tear my " Sails, and cut my Rigging, and that they " began to edge away from me; and finding " alſo, that Five of my Mizen-ſhrouds were " ſhot away, and fearing that my Maſts might " be brought by the Board before it might be " poſſible for me to get within a proper Di- " ſtance for Grape-ſhot; I ordered my Officers " to cauſe them to be drawn, and the Guns to " be loaded with Double-round, that ſo we " might have an equal Chance with our Ene- " mies: But finding, by that Experiment of a " Shot from each Deck, that we was not near " enough to do proper Execution (though ſome " of my People, by miſtaking my Orders, or " rather Raſhneſs, which is not an uncommon

" thing

" thing upon ſuch Occaſions, fired a few Guns " irregularly, yet) I cauſed them immediately " to forbear, and endeavoured to near the " Enemy: In ſome time after I directed an- " other Shot to be fired from each Deck; and, " perceiving thereby that we were then within " Point-blank, I began to engage the Enemy, " and continued to do all in my Power to get " nigher to them, yawing the Ship, and or- " dering the Helm to be put hard up, ſome- " times the one way, and ſometimes the other; " by which means both my Broadſides were " brought to bear: And this, I humbly pre- " ſume, will convince every Seaman, that I " was then in the moſt advantageous Place or " Station for attacking the Enemy, as they " came up; that I was far enough to Lee- " ward, as well with regard to the *Real*, as to " the ſaid Five Ships; and that, if they did " not bear away, they muſt fetch on board of " me: To which I need only add, under this " Article, That I continued the Engagement, " till I was called off by my Admiral's Signal; " and that my Precaution, of trying my Di- " ſtance from the Enemy by Guns fired from " each Deck, was the beſt means to be ſure " of it; and I hope will appear to be a very " ſtrong Indication of my Intention to pay a " full Regard to his Majeſty's Fighting In- " ſtructions.

" To the Third Article, I humbly ſubmit " to this Court, Whether what I have ſaid, in " Anſwer to the Firſt Article, is not alſo a full " Anſwer to this: But it may be proper to " add, That I was actually engaged with the " Five Ships in the Enemy's Rear, at the time " the *Marlborough*'s Maſts fell; conſequently " doing my Duty, and particularly by hinder- " ing thoſe Ships from joining their Admiral, " ſo ſoon as otherwiſe they might have done, " to the further Diſadvantage of the *Namur* " and *Marlborough*.

" I ſhould now, Sir, proceed to anſwer to " the Fourth Article of the Charge, wherein I " am accuſed of not covering and conducting " the Fireſhip, when ſhe was bearing down to " the *Real*; but as this is a Point of ſome Nicety, " I beg firſt to know the Opinion of this " Court, Whether it was really my Duty to " have ſo much as attempted the Performance " of that Service, without ſpecial Order for it " from my Admiral, either by Signal or other- " wiſe: And I am the more deſirous to have " the Judgment of the Court upon the Matter, " before I enter into any Defence relating to " it, becauſe it is a thing which does not only " concern me, though I can very well anſwer " to it; but indeed it may affect every Cap- " tain, who now is, or may hereafter be, in the " Navy, and have the Misfortune to be called " to account for his Conduct in the manner I " have been.

" To the Fifth Article, it may be ſufficient " for me to ſay, It is intirely groundleſs, ſince " I can aſſert, with the greateſt regard to Truth, " That, on the Day of Action, I did not either " diſobey any Inſtructions of his Majeſty, or " any Signal or Command of my Admiral, " nor neglect any Part of the Naval Military " Diſcipline, nor was guilty of any Breach of " Duty whatever; and, conſequently, that I was " ſo far from being one of the principal Cauſes " of the Miſcarriage of his Majeſty's Fleet, " that I was not in the leaſt Degree any Cauſe " of it at all.

" Thus, Sir, I have laid before this Honour- " able Court, all I thought neceſſary to trouble " you with, in Defence of myſelf, againſt ſo " heavy a Charge, as hath been produced " againſt me; and if what I have ſaid ſhall be " ſufficiently ſupported by the Evidence, which " ſhall be given for that Purpoſe, I make no " doubt, but, on the contrary, am fully per- " ſuaded, you will find it reaſonable and juſt to " acquit me with Honour.

" I muſt beg Leave to own, that though I " have had a very ſtrong Inclination to make " a few Obſervations upon my Services before " the Day above-mentioned; thoſe after it; and " the Approbations which I have had the Ho- " nour to receive of them, as well as upon the " Dignity of the Command I was lately veſted " with; the Proſpects of Honour and Fortune " that Command afforded me; the Manner in " which I was ſtripped of it; and the real Hard- " ſhips I have ſince undergone; Yet, Sir, I " have got the better of myſelf in thoſe Par- " culars; and, in Reſpect to the Court, will " treſpaſs no farther upon your Patience, but " chearfully ſubmit the Juſtice of my Cauſe to " your Determination."

Court. You may depend upon having all the Juſtice from the Court, that you can deſire.

Priſoner. I am very ſenſible of it, and am glad I have ſuch an Honourable Court to try me.

The Priſoner then produced a Plan of the Action; which he deſired might lie upon the Table; but it was not admitted; the Court telling him, They could have no Regard to it; but that they muſt judge by the Evidence.

Then the Witneſſes, in Behalf of the Priſoner, were ordered to be called in: And Captain *Ambroſe* deſiring the Judge-Advocate to call in *Frederick Breton*, Maſter of the *Rupert*, he was called in, accordingly.

Frederick Breton ſworn.

His Depoſition was read.

Frederick Breton, *Maſter of his Majeſty's Ship the* Rupert, *at the Time of the late Engagement, in the* Mediterranean, *between his Majeſty's Fleet, and the Combined Fleet of* France *and* Spain, *on the* 11*th of* February, 1743, *maketh Oath*;

THAT when Admiral *Mathews* made the Signal for the Line of Battle ahead, in the Morn-

Morning of the aforeſaid Day, the *Rupert* got into the Line, and continued in it; and did not, during any time while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorſetſhire* and *Eſſex* were ſtationed between the *Marlborough* and *Rupert*, and were to Windward of the *Rupert*; and began to fire quickly after the Admiral.

That the *Rupert* bore down at the ſame time the Admiral did, and brought to in the Line; and, juſt after ſhe brought to, the *Real*'s Second aſtern bore away before the Wind; upon which the *Rupert* ſtood after her; whereupon ſhe run cloſe under the *Spaniſh* Admiral's Lee-Quarter; and then the *Rupert* brought to again, and lay with Topſails aback, to wait for the Five *Spaniſh* Ships aſtern, that were coming up, which were then about Four or Five Miles diſtant; and did not get up with the *Rupert* till about Three o'Clock; and then ſhe began to fire at them, but not till ſome time after they had fired at her.

That, about Two o'Clock, Captain *Ambroſe* ordered him to hail the *Royal Oak*, and tell her he intended to bear down, to engage the Five ſternmoſt Ships; and deſired ſhe would bear down with him; that he does not know what Anſwer was made from the *Royal Oak*; but the *Rupert* thereupon edged down a little, and brought to again.

That it was not poſſible for the *Rupert* to get near enough to the *Real*, and her Second, to do Execution, without being between Two Fires, and breaking the Line, becauſe ſhe muſt have gone between the *Dorſetſhire* and *Eſſex*, and the *Spaniſh* Admiral's Second, and been expoſed to their Fire.

That a few Guns were at firſt fired from the *Rupert*, at too great a Diſtance; but when Captain *Ambroſe* obſerved, they did not reach the Enemy, he ordered Firing to ceaſe; and afterwards cauſed Two or Three Guns to be fired at a Diſtance of Time from each other: And when he found the Shot would well reach the Enemy, he ordered Firing to be continued, though the Enemy had fired ſome time at the *Rupert*, and their Shot went far over her, before ſhe began to fire at all.

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering for their Admiral, and when the *Rupert* began to engage them, they edged away; but, if they had continued their Firſt Courſe, they muſt have been cloſe along-ſide the *Rupert*.

That the *Rupert* engaged the ſternmoſt Ships of the Enemy, about the time the *Malborough*'s Maſts fell, the Headmoſt of thoſe Ships being then come up, within point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down upon the *Real*.

That, when the Fireſhip blew up, ſhe was not above Half a Mile diſtant from the *Rupert*; and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, the Admiral wore to the Northward; upon which the *Rupert* ceaſed Firing, hauled her Wind, and paſſed to Windward of the Admiral and *Dorſetſhire*, and wore round after the *Dorſetſhire*, and was then again engaged with the *Spaniſh* Ships in paſſing by them.

That this Deponent did not ſee any Signal of Diſtreſs made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement; nor did he hear the *Rupert* hailed from the *Royal Oak*, during the Engagement: And he does thoroughly believe, that Captain *Ambroſe* was never off the Quarter-deck during the Engagement, becauſe he could not have been off without this Deponent's obſerving it.

That, to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement, acted agreeable to the Naval Inſtructions and Diſcipline, and behaved with Conduct and Courage; and ſeveral times expreſſed his Uneaſineſs, that the Enemy's Five Ships were ſo long coming up.

Fred. Breton.

Sworn before me, this 20th *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Did the *Rupert*, when the Admiral began to engage, bring to in a Line?

A. The *Rupert*, when the Admiral began to engage, did not bring to directly into the Line: We were not ſo ſoon down as the Admiral; for when the Admiral firſt bore away, it was unexpectedly; I believe, it was a thing that nobody could expect, for we had all along before been ſteering away large for the *French*.

Q. I thought you had been upon a Wind?

A. The Fleet went large all the Morning: We were about Two Points from the Wind.

Q. Was that all the Delay you made?

A. Yes.

Q. And you bore away immediately afterwards?

A. Quickly after; but we were obliged to take a little Sweep, to give room for the Ships ahead; and we brought the Wind upon the Starboard-Quarter, which occaſioned us to be ſomewhat longer in getting into the Line, than we ſhould otherwiſe have been; and occaſioned us to continue Sail for that Purpoſe, ſome little time after the Admiral brought to.

Q. How long was it after the Admiral began to engage, that you got into the Line?

A. Not above Half a Quarter of an Hour, or thereabout.

Q. And was you then in a proper Station, leaving room for the Ships ahead?

A. Yes.

Q. Did thoſe Ships ahead bear down with you, and get into their Stations?

A. They did not: They were not ſo far as us; but were upon our Weather-Bow, during the beſt Part of the Time.

Q. Did you bear down in a regular Line with the *Namur* and *Marlborough?*

A. As near as we could ſee it for Smoke and Fire, we were in a regular Line.

Q. Did you begin to engage, as ſoon as you got into the Line?

A. No.

Q. Why did you not?

A. There was no Ship for us to engage.

Q. Did thoſe Ships ahead come into the Line?

A. No: They kept to Windward conſiderably. Had we run up abreaſt of them, they would have been better than Half a Cable's Length to Windward of us.

Q. What Room did you allow for the Ships ahead to be from each other?

A. About a Cable's Length.

Q. Then, How far was you from the *Marlborough?*

A. About Half a Mile, or about Five Cables Length.

Q. What did you do then?

A. We lay inactive for about Half an Hour.

Q. What time did you begin to engage?

A. About Three o'Clock.

Q. At what Ship did you fire?

A. At the Headmoſt of the Five ſternmoſt *Spaniſh* Ships: To the beſt of my Remembrance, there were Five of them.

Q. You ſay, At the Firſt of the Engagement, you lay inactive?

A. Yes; for there was no Ship to engage.

Q. And you ſay, The *Spaniſh* Ships, that were coming up, began to fire at you about Three o'Clock?

A. They began to fire at us ſome time before that; and ſome of their Shot went over us.

Q. What Diſtance might they have been from you?

A. When we firſt began to continue our Fire, we were about Four Cables Length diſtant; but, before that, ſeveral Shot had been fired upon a Level, by the Captain's Order, to try, if we were within Reach.

Q. Was not your Metal lowered during the Engagement?

A. I don't know, that any Metal was lowered, more than taking the Quoin out of the Guns.

Q. Did the *Dorſetſhire* and *Eſſex* lie idle at firſt?

A. No; they were firing.

Q. Were they within a proper Diſtance?

A. No; they were at too great a Diſtance.

Q. What Ships did they fire at?

A. They could fire at no other Ship, than the *Real*'s Second aſtern.

Q. When you brought to, Was you in a Line with the *Namur* and *Marlborough?*

A. Yes; as near as I could diſtinguiſh.

Q. What Mark had you for knowing you was in the Line?

A. Becauſe I ſaw the *Marlborough*'s and *Namur*'s Maſts were together, or very near it.

Q. Was you not then within a Diſtance to engage the *Hercules?*

A. I think not.

Q. Did you obſerve, about that time, no Ship aſtern of the *Hercules*, and conſiderably ahead of the Four Ships coming up?

A. No.

Q. Was there any Ship disjoined from the Four Ships, between them and the *Spaniſh* Admiral's Second?

A. I don't know, that there was: I did not obſerve any.

Q. How many Ships were there aſtern of the *Real?*

A. There were Six; one cloſe aſtern of the *Real*; and the others ſeparated at a conſiderable Diſtance.

Q. Were the Five ſo ſeparated in a good Line with each other?

A. They were in a pretty good Line; but, I believe, there might be a little more Diſtance between the Second and Third, than there was between the other Three.

Q. How did the Headmoſt of the Five lie, with reſpect to you, when you firſt began to engage her?

A. She was upon our Starboard-Quarter; ſomething abaft our Beam.

Q. Whereabouts was the *Royal Oak* at that time?

A. She was aſtern of us at that time: She might be a little to Windward, or to Leeward; but not conſiderably.

Q. Was ſhe a little to Windward, or was ſhe a little to Leeward?

A. I think, ſhe was right aſtern, as near as poſſible: I don't remember her being to Leeward of the *Rupert* all the Day.

Q. Was ſhe in that Station the whole Day?

A. No: After we had engaged for ſome time, ſhe got her Fore-tack on board, and went to Windward of us; for, I remember, the Firſt Lieutenant came upon the Quarter-deck, and ſaid to Captain *Ambroſe*, Sir, the *Royal Oak* is going to leave you.

Q. What time was this?

A. About Half an Hour after Three:—Upon which, I looked over the Larboard-Quarter, and ſaw the *Royal Oak*, with her Fore-tack on board, and her Mizen-ſheet hauled out.

Q. How long was that, after you began to engage?

A. About Half an Hour.

Q. How long did you continue engaged, after the *Royal Oak* got to Windward of you?

A. We

A. We continued engaged, till Mr. *Mathews* wore.

Q. From the Time you obſerved the *Royal Oak* to haul to Windward of you, How long might it be, before Mr. *Mathews* wore?

A. I believe, about an Hour.

Q. Did you engage with the Headmoſt of thoſe Ships; or with more of them?

A. With the Headmoſt; and the Second alſo ſometimes fired at us.

Q. Was there no Ship, beſides your Ship, of the *Britiſh* Squadron, engaged with thoſe Ships?

A. Yes: The *Cambridge* came down ſome time afterwards.

Q. Did you continue Engaging, after the *Cambridge* came up?

A. She came up ſo cloſe to us, that Orders were given to ſtop firing the After-Guns.

Q. Where was the *Royal Oak* then?

A. Upon our Larboard-Quarter.

Q. Was ſhe firing?

A. I don't know; but, I think, not; becauſe the *Cambridge* was between her and the Five Ships.

Q. Are you poſitive, that the *Royal Oak* came upon your Larboard-Quarter, by her ſpringing her Luff? Or was it by your ſpringing your Luff?

A. By the *Royal Oak*'s ſpringing her Luff.

Q. How far had the Headmoſt of thoſe Five Ships got up, or in what Poſition was ſhe from you, when the Fireſhip blew up?—You ſaw the Fireſhip blow up?

A. Yes.

Q. How was the Headmoſt of thoſe Ships from you then?

A. She was then nigh upon our Beam: I can't be certain, whether a little before, or a little abaft it.

Q. Were the *Cambridge* and you both engaged with thoſe Five Ships, when the Fireſhip blew up?

A. I think, the *Cambridge* had wore, and gone away from us, a little before.

Q. What was you doing then?

A. We were firing upon them.

Q. Firing upon what?

A. Upon the Headmoſt of thoſe Ships: From the firſt of our Firing, they edged more and more from us.

Q. Did you continue Firing at thoſe Five Ships?

A. Yes; we did:—When they came up the Length of us, after we had fired ſome little time, they edged away from us.

Q. What was you doing, when the *Marlborough*'s Maſts fell?

A. We were firing upon thoſe Ships.

Q. Is it your Opinion, as an Officer, that you engaged thoſe Ships as near as a *Britiſh* Man of War ought to do?

A. I think, Captain *Ambroſe* did as much as he could; for he backed his Sails, and yawed, in order to get to them.

Q. Was there no better Way of nearing them, than by yawing and backing your Sails?

A. If we had hauled upon our Starboard-tack, we ſhould hardly have fetched them.

Q. How was the Wind?

A. Abaft our Beam.

Q. What did you ſay to the Queſtion, Whether Captain *Ambroſe* did his Duty, as an *Engliſh* Man of War ought to do?

A. Captain *Ambroſe* engaged as nigh as he could: I don't ſay, he engaged them as near as a Ship ought to do; becauſe we fired no Small-Arms:—We did not engage as near as the *Marlborough* did.

Q. You ſay, Captain *Ambroſe* yawed, and backed his Sails; To do what?

A. In order to back his Ship aſtern, that the Enemy might come up nearer to us.

Q. In what Poſition was the Enemy then?

A. She was upon our Starboard-Quarter.

Q. What do you ſay to the Queſtion, Whether there was no better Method of nearing the Enemy, than by yawing, and backing your Sails?

A. I don't think there was, at that time; becauſe the Wind came aft.

Q. How was the Wind then? Was it before, or abaft your Beam? And how was the Enemy's Poſition?

A. The Wind was about North-Eaſt, abaft our Beam; and the Enemy upon our Starboard-Quarter.

Q. You ſay, From about Three o'Clock, till the Admiral hauled down the Signal to engage in the Evening, you was engaged all that time with thoſe Ships?

A. Yes.

Q. Now, tell what Damage you received in all that time?

A. We had a great many Shot through our Sails; but none of them, I believe, intirely diſabled: We had, to the beſt of my Remembrance, Four Mizen-ſhrouds, and, I believe, as many of our Main-ſhrouds, cut, and our Main-top-maſt Back-ſtay, and ſome running Rigging: The Back-ſtay came down upon my Head.

Q. Was all this done before Wearing?

A. I can't be certain, that it was all done before Wearing.

Q. Was the Back-ſtay cut before Wearing?

A. Yes.

Q. Had you any Shot in your Hull?

A. Some ſtruck our Hull.

Q. Had you any Shot through your Hull?

A. None through.

Q. Had you any Men killed, or wounded?

A. None killed: We had Five or Six wounded.

Q. Were any of them wounded before Wearing?

A. None of them, as I remember, while we had the Larboard-tack on board.

Q. Did you ever fire your Larboard Broadſide?

A. We

A. We fired our Larboard Broadſide, when we yawed the Ship: The Ship was then thrown to, with her Head to the Eaſtward; and we brought our Larboard-Broadſide to bear upon them.

Q. In your Depoſition, you ſay, Captain *Ambroſe* hailed Captain *Williams:* Did you haul to Windward, or to Leeward, or back any Sails, to ſpeak to the *Royal Oak?*

A. We neither hauled to Leeward, nor to Windward, to ſpeak to her; but ſhe lay a little upon our Weather-Quarter.

Q. Relate to the Court what paſſed between Captain *Ambroſe* and Captain *Williams*, when you hailed the *Royal Oak.*

A. Captain *Ambroſe* ordered me to hail Captain *Williams*, to go and attack the Ships aſtern; and I hailed Captain *Williams* with a Trumpet; but I did not hear any Anſwer.

Q. From what Part of the Ship did you hail the *Royal Oak?*

A. From the Larboard-ſide of the Quarter-deck.

Q. Was you near enough to hear the Anſwer, if there had been any?

A. Yes.

Q. Do you remember, at any time of the Day, the *Royal Oak*'s running up, and hailing you?

A. I don't remember it.

Q. Did you ever hear any body on board your Ship ſay, That they heard the *Royal Oak* hail you?

A. No; I never heard it from any of our People.

Q. Was Captain *Ambroſe* never in the Starboard Quarter-gallery?

A. No; not that I remember.

Q. Are you ſure Captain *Ambroſe* was never in the Starboard Quarter-gallery?

A. I can't be ſure of that; but I don't remember, that he was ever off the Quarter-deck.

Q. How long was you engaged with thoſe *Spaniſh* Ships, before the Admiral bore away?

A. Better than an Hour.

Q. Was you near enough, during that time, to do proper Execution?

A. Yes; I believe we were, with our great Guns.

Q. How do you know that?

A. There was a Shot ordered to be levelled, and fired, from each Deck, to try, whether we were not near enough: Then we waited a little, and tried again; and I ſaw one of the Shot go ahead, and a great Way beyond; and one, I think, ſtruck her.

Q. How was your Metal, while you engaged?

A. Only lowered, by their Quoins being taken out, to anſwer the Heeling of the Ship.

Q. How long did you engage, after you was near enough to do proper Execution?

A. I believe, at firſt our Guns did not reach, and then we ſtopped Firing; but, after that, we were engaged about an Hour near enough to do proper Execution.

Q. Had you any Men killed or wounded then?

A. No.

Q. As you was ſo long engaged, near enough to do proper Execution, What was the Reaſon, do you think, that none of the Enemy's Shot hulled you?

A. I can give no other Reaſon, than that they fired high, in order to diſmaſt us.

Q. You ſay, that, at the firſt Bearing away, you brought to in a Line with the Admiral?

A. Yes.

Q. That, when the *Spaniſh* Ships came up with you, you tried your Upper and Lower Deck Guns, to try if you was near enough?

A. Yes: — That was after they fired at us ſome time. — The Enemy were, at firſt, aſtern of us; when they came abreaſt, they came nearer to us.

Q. After you found them reach, How long did you continue engaged?

A. After the Captain had ordered a conſtant Fire, we ſtill kept edging nearer to the Enemy; and continued Firing, till the Admiral wore.

Q. You ſay, At firſt bringing to, you was as near as could be in a Line with the *Marlborough* and Admiral; and that you afterwards edged down nearer the Enemy?

A. Yes.

Q. Muſt not this have brought you then to Leeward of the Line?

A. I believe, we were to Leeward of the Line the latter Part of the Engagement; becauſe we were obliged to haul our Wind, to let the Admiral paſs us, when we wore.

Q. How much was you to Leeward of the Admiral?

A. I can't tell.

Q. How much were the Five *Spaniſh* Ships to Leeward of their Admiral?

A. I can't ſay; but, I believe, they were to Leeward of their Admiral, by their frequent Edgings away; for they ſeemed to be in a Line with their Admiral the firſt Part of the Engagement.

Q. If you was in the Line, and thoſe Ships only edged away a little from their Line, Would you not then have been pretty near as nigh to them, as the *Marlborough* was to the *Real* and *Hercules?*

A. We never were ſo near to thoſe Ships, as the *Marlborough* was to the *Real* or *Hercules*, till after we wore; becauſe thoſe Ships edged away to Leeward: — If they had kept their Courſe, they would have been as near to us, as the *Real* was to the *Marlborough.*

Q. Did the Five *Spaniſh* Ships ſteer in a Line with their Admiral at firſt?

A. Yes.

Q. If they had continued to ſteer that Courſe, How near would it have brought them to the *Rupert?*

A. I believe, within Muſquet-ſhot.

Q. You ſay, You never was ſo near to thoſe Ships, as the *Marlborough* was to the *Real* and *Hercules?*

A. Not

A. Not till we wore :—After the *Real* bore away, I believe, they were right before the Wind; but they edged away, before the *Real* bore away.

Q. Was it your Fire that made them edge away?

A. I believe it was :—I don't know any other Reaſon but our Fire.

Q. Did you do them any conſiderable Damage?

A. All the Damage I perceived was, We had ſhot away the Clew of one of their Top-gallant-ſails.

Q. What Diſtance was the *Hercules* from the *Real*, when you brought up in a Line with the *Marlborough?*

A. Very near; I can't tell how near; but, I ſuppoſe, at a proper Diſtance that Ships ought to be.

Q. Then you muſt be as near to her, as the *Marlborough* was to the *Real?*

A. No.

Q. During the whole Day's Action, Was you, at any time, in a Line with the *Marlborough?*

A. We hauled up at firſt with the *Namur* and *Marlborough*, as near as poſſible.

Q. At Three o'Clock was you in a Line with the *Marlborough?*

A. I believe we were; but her Maſts were then gone; and I could not ſee whether we had them in one: Her Larboard-ſide appeared to us ſometimes, as ſhe yawed.

Q. How had you the Wind the latter Part of the Day?

A. Between Eaſt and North-Eaſt the latter Part of the Day.

Q. Have you any Log-Book, or Journal, with you?

A. No.

Court. 'Tis ſtrange a Maſter ſhould come without his Log-Book!

Witneſs. I did not bring it with me, becauſe I did not hear, that any were aſked for.

Q. Did you ever hear of the *Hercules*'s Bearing down to the Aſſiſtance of thoſe Ships you engaged?

A. She did bear away a ſhort time after the Engagement began; and, I believe, went ſo far the other Way as to bring the Wind upon her Starboard-Quarter; and then ſhe hauled up again, and run under the *Real*'s Lee-Quarter.

Q. Had the Five *Spaniſh* Ships continued the Courſe they were at firſt ſteering for their Admiral, Do you, upon your Oath, believe, that you ſhould have been as near to them, in the Station you was, as the *Marlborough* was to the *Real?*

A. As Things appeared to me, I believe, we ſhould: — It was plain we muſt be a good Way to Leeward, to bring our Larboard-ſide to bear when they were coming up aſtern of us :— They ſeemed to be ſteering very little wide of our Quarter; and, if they had kept the ſame Courſe, we muſt have been within Muſquet-ſhot.

Q. You ſay, You was within Gun-ſhot of them?

A. Experiment ſhewed us, that we were :— For, I believe, one of the Shot, which we fired upon a Level, ſtruck the Ship's Bow.

Q. How much Time did you loſe in trying thoſe Experiments?

A. I don't know, that we loſt any :—For the Enemy was coming up, and firing at us, and their Shot flew over us, when we made thoſe Experiments.

Q. Did you obſerve the *Norfolk*, when ſhe firſt engaged the *Spaniſh* Ship, ahead of the *Spaniſh* Admiral?

A. Yes.

Q. In what Poſition did thoſe Three Ships, the *Norfolk*, *Namur*, and *Marlborough*, bear with you?

A. They appeared to me to be in a Line, as near as I could tell for the Smoke.

Q. What, with you?

A. Yes; in a Line with us.

Q. When you hailed the *Royal Oak* by Captain *Ambroſe*'s Order, Did the *Royal Oak* bear down with you, or did you go down ſingly?

A. The *Royal Oak* bore down with us :— We bore down but a little Way, becauſe the Ships were not then come up.

Q. Was the *Royal Oak* right aſtern of you, when you engaged the Enemy?

A. Yes.

Q. Did ſhe engage with you?

A. Yes: — She began to fire before us, becauſe ſhe was the ſternmoſt Ship.

Q. Did ſhe continue to fire after you?

A. No: — The *Cambridge* came down, and ſtopt her Firing: — I did not ſee her fire again, till after the Admiral wore.

Q. At the firſt of the Firing, Do you not remember the *Royal Oak* to have engaged a ſingle *Spaniſh* Ship?

A. No; I don't remember, that ſhe did :— I don't remember any thing of a ſingle Ship coming up at all.

Q. When the Fireſhip blew up, Was the Headmoſt of the Five *Spaniſh* Ships but then abreaſt of you?

A. Yes :—She was but then abreaſt of us.

Q. How was the Fireſhip from you then?

A. She was right ahead of us, when ſhe blew up.

Priſoner aſked,

Q. When that Ship aſtern of the *Real* wore, Did we not put our Helm aweather, and ſet our Foreſail, in order to wear after her?

A. Yes: — And, when ſhe brought to, we brought to again.

Q. When we bore down, and the *Royal Oak* followed us, after we hailed her, Did we not go down ſo far, before we brought to, that thoſe *Spaniſh* Ships might have laid along to their Admiral, between us and our Line?

A. I really believe, as the Wind was, they might have weathered both us and the *Royal Oak*, if they had laid cloſe to the Wind.

Q. When we brought to, Did we not lie in their Track?

Here one of the Members objected to the Manner of asking the Queſtion; and ſaid, That the Priſoner ought to ask, Did we, or Did we not?

The Priſoner ſaid, That he had no Deſign in asking his Queſtions in the Manner he did, but only asked as the Words occurred to him: But, if the Court pleaſed, he would write down his Queſtions, for their Approval, before he asked them.

The Court told him to go on in asking his Queſtions.

Q. When we brought to, Did we, or did we not, lie in their Track?

A. Yes: — We were ſo far down, that they could have weathered us, if they had thought proper.

Q. Did I not ſtand upon the Nettings the whole time, and expoſe my Perſon as much as poſſible?

A. I believe you did.

Court. You can ſay, whether he did or no.

Witneſs. I know he never ſhewed any Signs of Fear; he looked over the Hammocks, and ſtood by the Barricado-ſide, very often.

Q. Did I not order the Captain and Lieutenant of Marines to lie down with the Marines, to ſave them, till I came within the Reach of Small-Shot; and tell them, it was my Duty and yours to look about, till it was a proper time for them to come into Action?

A. Yes; you ſaid ſo, or ſomething to that Purpoſe.

Q. The Moment I came into the Line, Did I not clap my Hands, and ſay, I was undone?

A. Yes:—I heard you expreſs great Uneaſineſs at not being able to engage the Enemy.

Q. Did I not bemoan my Misfortune in being ſo ſituated, and complain, What have I been guilty of, that I ſhould fall into ſuch a Part of the Line, as not to have any body to engage with?

A. I heard you often expreſs yourſelf to that Effect.

Q. And did not the Firſt Lieutenant, and you, endeavour to give me a little Comfort, when you ſaw me ſo uneaſy? And did not he, and you, ſay to me, in order to comfort me, Have Patience; you are in the Line; and thoſe Five Ships will ſoon be up with you?

A. Yes; I did ſay, that thoſe Five Ships would ſoon be up with you.

Q. Did I, or did I not, then ſay, Conſider our Honour, and let us not leave room for Cenſure; it is better to be puniſhed for Fighting, than not Fighting? Hail the *Royal Oak*, and we'll bear down to thoſe Ships with him?

A. I believe you ſaid ſomething to that Effect.

Court. Speak poſitively; for Belief is nothing to the Purpoſe.

Witneſs. I did hear Captain *Ambroſe* ſay ſomething to that Purpoſe; and he ordered me immediately to hail the *Royal Oak*.

Q. Did you ever ſee me bob my Head, or ſtartle, or expreſs any Signs of Fear, when the Balls were flying over my Head?

A. No; I did not.

Q. Was my Gallery full of all my Furniture?

A. I can't ſay how full it was; but I know all your Cabin-Furniture was put into the Gallery; for I ſaw your Servants do it.

Q. Did not the *Cambridge* wear, and run away to her Admiral, and leave us engaged with thoſe Ships?

A. I know the *Cambridge* hauled away, as ſoon as ſhe had fired Four or Five Broadſides at moſt, and wore, and ſtood towards Admiral *Leſtock*, and left us engaged.

Q. After the Fireſhip blew up, Did we not conſult how we ſhould avoid the Flames of her, that lay unextinguiſhed upon the Water.

A. I know it was a Diſpute, Whether we ſhould leave them on the Starboard or Larboard-ſide: The Admiral wore very ſoon after that; and, I think, we went to Windward of it.

Q. How long have you been at Sea?

A. Twenty Years.

Q. Don't you think, from the Bottom of your Heart, as you are upon your Oath, that I would have given all my Fortune, or compounded for the Loſs of a Leg, or an Arm, to have had a Ship to engage with?

A. I can't ſay as to that; but I know you expreſſed great Uneaſineſs, that you had not a Ship to engage with.

Then he withdrew.

Captain *Henry Symes*, of Soldiers, on board the *Rupert*, was called in, and ſworn.

His Depoſition was read.

Captain Henry Symes, *of Soldiers on board his Majeſty's Ship the* Rupert, *at the Time of the late Engagement in the* Mediterranean, *between his Majeſty's Fleet, and the Combined Fleet of* France *and* Spain, *on the* 11*th* February, 1743. *maketh Oath*;

THAT, ſoon after Admiral *Mathews* bore down to engage the Enemy, on the aforeſaid Day, the *Rupert* got into the Line of Battle; and continued in it; and did not, at any time while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorſetſhire* and *Eſſex* were ſtationed between the *Marlborough* and *Rupert*, and were to Windward of the *Rupert*, and began to fire quickly after the Admiral.

That the *Rupert* bore down at the ſame time the Admiral did, and brought to in the Line, and continued ſo during the time Mr. *Mathews* continued to engage with the *Spaniſh* Admiral;

and

and, juſt after ſhe brought to, the *Real*'s Second aſtern bore away before the Wind, and run cloſe under the *Spaniſh* Admiral's Lee-Quarter; and then the *Rupert* brought to again, to wait for the Five *Spaniſh* Ships aſtern, that were coming up; which were then about Four or Five Miles diſtant, and did not get up with the *Rupert* till about Three o'Clock; and then ſhe began to fire at them, but not till ſome time after they had fired at her.

That it was not poſſible for the *Rupert* to get near enough to the *Real*, and her Second, to do Execution, without being between Two Fires, and breaking the Line; becauſe ſhe muſt have gone between the *Dorſetſhire* and *Eſſex*, and the *Spaniſh* Admiral's Second, and been expoſed to their Fire.

That a few Guns were at firſt fired from the *Rupert*, at too great a Diſtance; but, when Captain *Ambroſe* obſerved they did not reach the Enemy, he ordered Firing to ceaſe; and afterwards cauſed Two or Three Guns to be fired, at a Diſtance of Time from each other; and, when he found the Shot would well reach the Enemy, he ordered Firing to be continued, tho' the Enemy had fired ſome time at the *Rupert*, and their Shot went far over her, before ſhe began to fire at all.

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering for their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their firſt Courſe, they muſt have been cloſe along-ſide the *Rupert*.

That the *Rupert* engaged the headmoſt Ships of the Enemy about the time the *Marlborough*'s Maſts fell, the Headmoſt of thoſe Ships being then come up within about point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down to the *Real*.

That, when the Fireſhip blew up, ſhe was not above half a Mile diſtant from the *Rupert*, and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, the Admiral wore to the Northward; upon which the *Rupert* ceaſed Firing, hauled her Wind, and paſſed to Windward of the Admiral and *Dorſetſhire*, and wore round after the *Dorſetſhire*, and was then engaged with the *Spaniſh* Ships in paſſing by them.

That this Deponent did not ſee any Signal of Diſtreſs made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement; nor did he hear the *Rupert* hailed from the *Royal Oak* during the Engagement.

That, to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement, acted agreeable to the Naval Inſtructions and Diſcipline; and behaved with Conduct and Courage; and, ſeveral times, expreſſed his Uneaſineſs, that the Enemies Five Ships were ſo long coming up.

Henry Symes.

Sworn before me, this 20th Day of *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Poop.

Q. You ſay, The *Rupert* bore down, and brought up in a Line with the Admiral?

A. I am no Seaman; but will expreſs myſelf as well as I can, if the Court pleaſes.—On the Eleventh of *February*, the Admiral bore down on a ſudden; and, when the Admiral bore down, the *Rupert* and *Royal Oak* followed; and, in a little time after, the *Rupert* brought up in a Line with the Admiral. I ſhould not have obſerved any thing of the Line, but for a Paſſage which happened between Captain *Ambroſe* and his Maſter: Captain *Ambroſe*, expreſſing his Uneaſineſs at having no Ship to engage, ſwore and ſtamped, and ſaid he had a great mind to break the Line, to go down and engage thoſe Five Ships: Upon which the Maſter ſaid, pointing to a Book that lay on the Arm-cheſt; Then you'll be hanged for breaking your Fighting Inſtructions: Conſider you are in the Line: That was the Reaſon made me look; and I then obſerved the *Marlborough*'s Stern to be right ahead of us.

Q. Were not the *Marlborough* and *Namur* in a Line?

A. No; the *Marlborough* was to Leeward of the *Namur*; for when the Smoke permitted me to ſee them, as I looked along the Side of the *Marlborough*, I ſaw an Opening between her and the *Namur*, the *Marlborough* being then nearer the Enemy than the *Namur*: Afterwards Captain *Ambroſe* ordered his Maſter to call to the *Royal Oak*, who was about Two Ships Length off, and tell him, he was going down to the Five Sail, and deſired, he would go down with him; but I did not hear the Anſwer: Then Captain *Ambroſe* ſaid, Bear down, or, Edge down: The *Spaniſh* Ships were then coming up, and there was a greater Diſtance between the Headmoſt and the next, than there was between any of the other Four.

Q. Then there were Five of them?

A. Yes;—the Headmoſt of them fired at us, and ſome of the Shot went beyond us, and ſome fell ſhort: Then Captain *Ambroſe* ordered them to fire a Quarter-deck Gun; and the Shot fell ſhort: Then he tried ſome Guns upon the Upper-deck; and they fell ſhort: Before he could ſtop the Men, there were Ten or a Dozen Guns fired: And, a little while after, he ordered them to fire at the Headmoſt Ship; and there was ſomething done to the Ship, I can't expreſs; but I think it was to lay, or bring aſide to the *Spaniſh* Ships: And then I ſaw the Shot

Shot of the *Rupert* go over the Headmoſt of the *Spaniſh* Ships; and ſome went ahead, and ſome went aſtern, and others fell ſhort; and then we continued to engage, till the Fireſhip blew up.

Q. If the Shot fell ſhort, then you were not within Point-blank?

A. I don't know what Point-blank is; I can't ſay whether we were or no.

Q. How far was you from them, when you fired your Broadſides?

A. I believe, about Half a Mile.

Q. Did you hear Captain *Ambroſe* ſay, He would go down, and cover the Fireſhip, when ſhe was going down to the *Real?*

A. I don't remember any thing of that.

Q. You ſaid, You hailed the *Royal Oak:* What followed?

A. Yes; Captain *Ambroſe* ordered his Maſter to hail the *Royal Oak*, and to tell them, he would go down to thoſe Ships: Will you follow me? or, Follow me; I don't know which. There was an Anſwer from the *Royal Oak*, but what it was, I did not diſtinguiſh; neither did I at any time hear, what it was. Captain *Ambroſe*, upon that, gave Orders, and ſaid, Bear down; or, Edge down; I don't know which: We continued to edge down a little time: The Headmoſt of the Five Ships of the Enemy fired at the *Rupert*; ſome of her Shot went beyond her, and ſome fell ſhort of her: Captain *Ambroſe* then ordered them to try Two or Three of the Quarter-deck Guns; the Shot fell ſhort: Some of the Men then fell to Firing without Orders; and Ten or Twelve Guns were fired, before they could be ſtopped: Then the Firing ceaſed a little while: He then made them try the Guns again; and then I ſaw the Shot of the *Rupert* go over the Enemy; ſome went beyond her ahead, and ſome aſtern, and ſome fell ſhort, and ſome I did not ſee where they fell. From that time, Firing at the Headmoſt Ship continued, till the Fireſhip blew up: Then the *Rupert* went to Mr. *Mathews*, who wore; the *Dorſetſhire* wore next; and the *Rupert* followed the *Dorſetſhire*; and ſo we ſtood upon the other Tack.

Q. I think you ſay, You don't underſtand Sea-Affairs?

A. No.

Q. At the time the *Rupert*'s Shot fell about the *Spaniſh* Man of War, Was the *Rupert* then in a Line with the *Namur* and *Marlborough?*

A. The *Namur* was then gone off; and the *Marlborough* was next to the *Real.*

Q. Was ſhe in a Line with the *Marlborough?*

A. No; ſhe was then to Leeward of the *Marlborough.*

Q. You gave it for a Reaſon juſt now, that you were in a Line, becauſe the Admiral's Stern was to your Head?

A. That was at the time Mr. *Mathews* was engaged with the *Spaniſh* Admiral:—During the time Mr. *Mathews* was engaged, we were in a Line with him; but after he hauled off, we were not.

Q. A Ship's Head may be to another's Stern, and not be in the Line: Was the *Rupert* ever ſo in a Line with the *Marlborough*, as to have her Three Maſts in one?

A. I can't ſay; for I never obſerved that.

Q. Do you underſtand to Windward, and to Leeward?

A. Yes.

Q. Was the *Rupert* ever ſo far to Leeward as the *Marlborough?*

A. Yes, ſhe was; and rather more to Leeward, while ſhe was edging down after thoſe Five Ships.

Q. Why do you think ſo?

A. Becauſe thoſe Five Ships kept edging away, and ſhe after them.

Q. Do you remember whether the *Rupert* fired any Guns at the Ship aſtern of the *Spaniſh* Admiral?

A. No; I believe not.

Q. How long did the *Rupert* keep firing?

A. About an Hour.

Q. How many of the Enemy's Ships fired at the *Rupert?*

A. The Firſt and Second particularly; and, I believe, the Third.

Q. As you was quartered upon the Poop, How many of your Soldiers had you killed or wounded in fighting thoſe Three Ships?

A. None.

Q. Did the *Royal Oak*, or you, begin to engage thoſe Ships firſt?

A. They fired at the *Royal Oak* firſt.

Q. Where was the *Royal Oak* from you?

A. Right aſtern.

Q. How long did the *Royal Oak* continue engaging thoſe Ships, before you began?

A. A little time, till the Headmoſt ſhot ahead of her.

Q. Was ſhe not rather to Windward, or was ſhe to Leeward of you, during the time you was engaging thoſe Ships?

A. There was very little or trifling Difference; but I can't ſay, whether one way or the other.

Q. Did the *Royal Oak* continue to engage aſtern of you, all the while you were engaging thoſe Five Ships?

A. No.

Q. What became of her?

A. I don't know how ſhe got away; but a Shot came over the *Rupert* very near us, and there was a Stroke given to the Ship to Windward of us: Upon which, ſome of our Men cried out, That Shot has miſſed us, and hit the *Royal Oak*, and cut the Stopper of her Anchor: The Stock of the Anchor was then hanging down to the Water, and the Flukes uppermoſt.

Q. How far was the *Royal Oak* then from you?

A. Two

A. Two or Three Ships Length.

Q. Where was the *Royal Oak* then?

A. Upon the Larboard-Quarter, or about the Beam.

Q. Did you look with a Glaſs, or with your naked Eye?

A. I ſaw the Anchor hang ſo with my naked Eye: We were then between the *Royal Oak*, and the Enemy; and the *Royal Oak* was then about upon our Weather-Beam.

Q. Was not you upon the Poop?

A. Yes.

Q. Then you can tell by what Accident the *Royal Oak* got upon your Weather-ſide?

A. I know nothing of it; I can give no Account of it; if I could, I am ſure I would.

Q. Did you not ſay the *Royal Oak* was upon your Quarter?

A. Not then; ſhe was upon our Beam.

Q. Do you remember any thing of—Five Mizen-ſhrouds being cut that Day?

A. I remember ſome were ſhot; but I can't tell how many.

Q. When were they ſhot?

A. In the Beginning of the Action; for they were on the Starboard-ſide.

Q. As you was quartered upon the Poop, How was it poſſible for the *Royal Oak* to get to Windward of the *Rupert*, and you not obſerve it?

A. I can't tell.

Q. Do you remember the *Royal Oak* ever being any Part of that Day to Leeward of you?

A. A little before we fired, about Half an Hour, I think, ſhe was about a Ship's or Two Ships Length to Leeward of us.

Q. When you obſerved the *Royal Oak* upon your Larboard-Broadſide, Did you look about at the Ships ahead of you?

A. No.

Q. Were your Sails full, or aback?

A. I can't ſay.

Q. Do you remember the Firing of your Larboard-Guns?

A. Yes; I remember the Larboard-Guns Firing, when they ſaid the Ship yawed.

Q. When you obſerved the *Royal Oak* upon your Larboard-Broadſide, Was it when your Larboard-Guns were fired?

A. I don't remember; or whether it was before or after; but I believe it was before.

Q. How long do you judge before?

A. I can't ſay; it might be a Quarter of an Hour, or more: I have but a confuſed Notion of it.

Q. Had you any Men killed or wounded?

A. One wounded by a Splinter on the Booms.

Q. Did any Shot hit your Ship's Hull?

A. Yes; ſeveral Shot ſtruck her.

Q. Did any of them go through the Ship's Sides?

A. No; none went through.

Q. Were there any Splinters?

A. There was one hit one of our Grenadiers.

Q. Were any of your Maſts hurt?

A. No.

Q. As a Soldier, Do you think the *Rupert* was near enough to engage, as a *Britiſh* Man of War ought to do?

A. I never was in a Sea-Engagement before, and can't ſay; but if as many Shot had hit us, as flew over us, they muſt have done great Execution.

Q. How far did they fly over you?

A. I am ſure they went One hundred and Fifty Yards over us.

Q. Did you fire any Small-Arms?

A. No.

Q. Why not?

A. Becauſe we were not within Muſquet-ſhot.

Q. You know Grape-ſhot?

A. Yes.

Q. Did your Ship receive any from the Enemy?

A. I can't tell.

Q. Did you ever hear any Talk among the Ship's Company, that ſhe did?

A. No; I never did.

Q. When you bore down in your Station, in a Line, as you ſay, with the *Marlborough*, Had the Admiral left off Firing, and hauled off?

A. No; the Admiral had not then hauled off: We brought to within Ten or Twelve Minutes after the Admiral did.

Q. How long did the Admiral engage, before he hauled off?

A. I believe about an Hour, or an Hour and a Quarter, or thereabouts.

Q. You remember to have heard the Maſter tell the Captain, That, if he had broke the Line, he'd be hanged for breaking his Fighting Inſtructions?

A. Yes; I remember it very well.

Q. Was you in a Line with the *Namur* and *Marlborough* then?

A. No; we were in a Line with the *Namur*, but not with the *Marlborough*, the *Marlborough* being to Leeward of the *Namur*; for, when the Smoke diſſipated, I could ſee a Space between them.

Q. Was the *Namur* then engaged?

A. Yes; ſhe was not gone off.

Q. Was you on board, when Captain *Ambroſe* was put under Arreſt?

A. Yes.

Q. When was that?

A. In *June* laſt; I was at Dinner with him.

Q. How did he behave? Did you ſee no Alteration in his Countenance?

A. Captain *Wilſon* came, and took him by the Hand, and ſaid, He was to be Captain of the Ship; and I did not ſee any Alteration in Captain *Ambroſe*'s Countenance.

Q. Did you hear before that, That Captain *Ambroſe* was to be ſent for home, to be called to an Account?

A. Yes; I heard, That he and ſeveral others were accuſed before the Houſe of Commons; and were to be ſent for; and the Affair to be examined into.

Q. Did you ever hear among the Officers, or Ship's Company, that he had ever miſbehaved?

A. I never heard any one Man ſay ſo.

Aſked by the Priſoner,

Q. Was there Room for any Perſon to go into my Stern-Gallery at the time of the Engagement?

A. No:—Upon our coming out of *Hieres* Bay, Captain *Ambroſe*'s Cabin-Furniture, except a Carpet, which he and I lay upon, were put into the Stern-Gallery: I had Two little *Portugal* Trunks, which I wanted not to be put down into the Hold; but the Gallery was ſo filled with Captain *Ambroſe*'s own Things, that there was not Room for them: The Chairs were all piled up one upon another to the Top of the Gallery, and laſhed together; and the Servants went over the Stern, to fetch ſuch things as were wanted out of the Gallery. I have been intimate with Captain *Williams*, and a great many Gentlemen of the Fleet; and I never heard Captain *Williams* charge Captain *Ambroſe* with any Breach of Duty.

Court asked,

Q. Did the Gallery open amidſhips?

A. Yes, near amidſhips, towards the Larboard-ſide.

Q. And was not the Space of the Door left clear to look over the Ship's Stern?

A. I don't know that.

Priſoner asked,

Q. Where did I dine?

A. Upon the Larboard-ſide of the Poop.

Q. Have you ever heard Captain *Williams*, or any of his Officers, complain, that I had not done my Duty that Day?

A. I was well acquainted with the *Royal Oak*'s Company, and particularly with Captain *Williams*; and the firſt I heard of it was in *June* or *July* laſt: When I came to *Mahon*, I met with ſome of the People of the *Royal Oak*; and they ſaid, That Captain *Williams* was gone home to be tried; and they ſaid, Captain *Williams* had laid the Fault upon Captain *Ambroſe*; for that he muſt hang ſomebody, to ſave himſelf.

Court asked,

Q. Did they ſay Captain *Williams* ſaid ſo?

A. They ſaid he did ſay ſo.

Q. Do you believe it to be true, that Captain *Williams* ſhould ſay ſo?

A. I have been acquainted with him for ſome time; and I think him too honeſt a Man to have uſed ſuch an Expreſſion.

Q. Where was This?

A. It was a Report at *Mahon* among the Officers.

Q. Do you know it—yourſelf?

A. No.

Q. What Officers did you hear it from?

A. The Officers of the *Royal Oak*.

Q. And what did the Officers ſay?

A. They ſaid, Captain *Williams* had laid the Fault upon Captain *Ambroſe*.

Q. Did you hear This, after you heard the Report of the Inquiry?

A. When I heard this Report about Captain *Williams*, it was about *June* laſt at *Mahon*; I never heard it before.—Captain *Williams* was gone then.

The Proſecutor for the Crown objecting to the taking down as Evidence, what had been ſaid by the Witneſs upon this Point, the Judge-Advocate obſerved to the Court, That he did not apprehend, that he could avoid taking every thing down, that was delivered in Evidence before the Court.

Q. Did you ever hear the *Royal Oak* hail the *Rupert*?

A. No, I never did; nor never heard it ſaid, That ſhe was hailed, till I came to *Mahon*, when I heard the *Royal Oak*'s People ſay ſo, at the ſame time, that I heard, what I have already declared.

Q. How long have you been in the Army?

A. Thirty-ſeven Years next *December*.

Then he withdrew.

Samuel Anthony, Cook of the *Rupert*, called in.

The Priſoner obſerved to the Court, That this Cook was an old Quarter-maſter, and ſo good a Steerſman, that he had always put him to the Helm, when he was in any Chace, or likely to come to an Engagement.

Then *Samuel Anthony* was ſworn;

And his Depoſition read.

Samuel Anthony, *Cook of his Majeſty's Ship the* Rupert, *at the time of the late Engagement in the* Mediterranean, *between his Majeſty's Fleet, and the Combined Fleet of* France *and* Spain, *on the* 11*th* February, 1743. *maketh Oath*;

THAT, when Admiral *Mathews* made the Signal for the Line of Battle ahead, in the Morning of the aforeſaid Day, the *Rupert* got into the Line, and continued in it; and did not, during any time while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorſetſhire* and *Eſſex* were ſtationed between the *Marlborough* and *Rupert*, and were to Windward of the *Rupert*, and began to fire quickly after the Admiral.

That the *Rupert* bore down at the ſame time the Admiral did, and brought to in the Line; and juſt after ſhe brought to, the *Real*'s Second aſtern bore away before the Wind; upon which the *Rupert* ſtood after her: Whereupon ſhe

run close under the *Spanish* Admiral's Lee-Quarter; and then the *Rupert* brought-to again, and lay with Topsails aback, to wait for the Five *Spanish* Ships astern, that were coming up, which were then about Four or Five Miles distant, and did not get up with the *Rupert* till about Three o'Clock; and then she began to fire at them; but not till some time after they had fired at her.

That it was not possible for the *Rupert* to get near enough to the *Real*, and her Second, to do Execution, without being between Two Fires, and breaking the Line; because she must have gone between the *Dorsetshire* and *Essex*, and the *Spanish* Admiral's Second, and been exposed to their Fire.

That a few Guns were at first fired from the *Rupert*, at too great a Distance; but when Captain *Ambrose* observed they did not reach the Enemy, he ordered Firing to cease; and afterwards caused Two or Three Guns to be fired at a Distance of Time from each other; and when he found the Shot would well reach the Enemy, he ordered Firing to be continued; though the Enemy had fired some time at the *Rupert*, and their Shot went far over her, before she began to fire at all.

That, when the *Rupert* engaged, the Five sternmost *Spanish* Ships were steering for their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their First Course, they must have been close along-side the *Rupert*.

That the *Rupert* engaged the Headmost and Second Ships of the Five *Spanish* Ships astern; and that the *Marlborough*'s Masts fell about Half an Hour past Three in the Afternoon; the Headmost of those Ships being then come up within about point-blank Shot of the *Rupert*; and she continued engaged with them, while the Fireship was going down to the *Real*.

That, when the Fireship blew up, she was not above Half a Mile distant from the *Rupert*, and was right ahead; and at the same time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, the Admiral wore to the Northward: Upon which the *Rupert* ceased Firing, hauled her Wind, and passed to Windward of the Admiral and *Dorsetshire*, and wore round after the *Dorsetshire*; and was then engaged with the *Spanish* Ships, in passing by them.

That this Deponent did not see any Signal of Distress made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or sent any Order to her, during the Engagement; nor did he hear the *Rupert* hailed from the *Royal Oak*, during the Engagement.

That, to the best of this Deponent's Judgment, Captain *Ambrose*, during the Engagement, acted agreeable to the Naval Instructions and Discipline, and behaved with Conduct and Courage; and several times expressed his Uneasiness, that the Enemy's Five Ships were so long coming up.

his
Samuel + *Anthony*.
Mark.

Sworn before me, this
20th *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the same to be true.

Q. Where was you quartered?
A. At the Helm.
Q. Did you see the Admiral, when he began to engage?
A. Yes.
Q. Did you bear down in a Line with him?
A. Yes.
Q. How long was it after you began to engage, before you was in a Line with him?
A. About Half a Quarter of an Hour.
Q. Were the *Dorsetshire* and *Essex* then in a Line also?
A. No; they were to Windward of us.
Q. How far were the *Dorsetshire* and *Essex* then to Windward of you?
A. About Half a Mile.
Q. Was it right to Windward, or to Windward and ahead withal?
A. About a Point, or a Point and an Half, upon our Larboard-Bow.
Q. When you first brought up in a Line, How far was you from the *Marlborough*?
A. About Three-quarters of a Mile.
Q. Did the *Dorsetshire* and *Essex* lie in that Position, during the time of your Engaging?
A. Yes.
Q. Don't you think, the *Rupert* might have closed the Line, and got up to the *Marlborough*, when those Two Ships lay to Windward?
A. No; it was impossible, because of the Fire of those Two Ships to Windward.
Q. How long did you lie inactive, before you engaged?
A. About a Quarter of an Hour.
Q. What Ship did you then engage?
A. We run down to the *Real*'s Second astern.
Q. Are you sure you engaged the *Hercules*?
A. No; she wore round, and run to the *Real* again: We did not fire a Gun at her.
Q. What did you fire at?
A. We did not fire a Gun, till we bore down, and met the Five *Spanish* Ships.
Q. What Countryman are you?
A. An *Englishman*.
Q. Was you not given that Cook's Warrant, because your Eyes are bad?
A. I am lame, and I have sore Eyes too.
Q. What was the first Ship you engaged?

(The Court observing the Witness to be trembling, and confused, told him to recollect himself, and not to be in a Hurry or Fright; for that nobody would hurt him.)

A. The Headmost of the Five Sail.

Q. Did

Q. Did you never fire any Shot before that?

A. Not that I know of.

Q. How long was it after you brought to in the Line, before you began to engage that Ship?

A. About Three-quarters of an Hour.

Q. What did you mean juſt now by a Quarter of an Hour, that you lay inactive?

A. That related to Bearing down to the *Hercules*.

Q. You did not fire at her?

A. No; we did not.

Q. When you firſt engaged thoſe *Spaniſh* Ships, Had no other Ship began to engage them?

A. Yes; the *Royal Oak* had fired at them.

Q. Where was the *Royal Oak* then?

A. Under our Stern.

Q. At what Diſtance?

A. About a Quarter of a Mile.

Q. Was ſhe right aſtern?

A. Yes.

Q. Where did you ſee her from?

A. I ſaw her over our Larboard-Quarter.

Q. Did the *Royal Oak* continue right aſtern, all the time you was engaged with thoſe Ships?

A. I never ſaw her after that time.

Q. Did you not ſee her, when the Stopper of her Anchor was ſhot?

A. No.

Q. Did you ever hear of ſuch a thing?

A. No; I never heard any thing of it.

Q. Was you at the Helm the whole time of the Engagement?

A. Yes.

Q. Which Side of the Wheel was you quartered at?

A. We ſhifted now-and-then; I was ſometimes at one Helm, and ſometimes at the other.

Q. Did the *Royal Oak* engage the Five Ships as long as you did?

A. No.

Q. What became of her?

A. She ſet her Foreſail, and went to Windward of us.

Q. You ſaid juſt now, You did not ſee her; and now you ſay, She ſet her Foreſail, and went to Windward: How do you know that?

A. I heard our People ſay ſo.

Court. You muſt not talk by Hearſay; only anſwer to what you know.

Q. Was the *Namur* upon your Lee or Weather-Bow, when you engaged thoſe Five Ships?

A. Upon our Weather-Bow.

Q. Are you ſure of that?

A. Yes.

Q. When the Admiral was upon your Weather-Bow, Did you ſteer the ſame Courſe with the Admiral?

A. No; we edged away.

Q. You ſay, The *Eſſex* and *Dorſetſhire* wore a Point or two upon your Weather-Bow; and that the *Royal Oak*, as you imagined, was hauled to Windward; Did you then continue engaging the Five Ships by yourſelf, or did you luff up, and haul away from them; or what did you do?

A. We contined fighting them.

Q. At what Diſtance was you then from them?

A. About Half a Mile, or rather leſs.

Q. How do you know you was in a Line with the Admiral, when you firſt brought to?

A. We had her Maſts in one; ſhe was rather upon our Weather-Bow.

Court. Conſider: You heard the Conſequences of Perjury read to you juſt now: Conſider what you ſay, and take Time; and be ſure of what you anſwer.

Witneſs. I am very ſure of it.

Q. And did your Head lie as the Admiral's did at that time?

A. Yes, I am ſure of it.

Q. During the time you engaged thoſe Ships, Did the Shot go through and through you?

A. I don't know that; but the Sails and Rigging were ſhot.

Q. Did any hit your Hull?

A. I don't know of any.

Q. Did you ſee any Shot go a great way to Windward over you?

A. Yes, a great many.

Q. Did any fall ſhort?

A. I did not ſee any fall ſhort.

Q. How many Men had you killed and wounded, before you wore?

A. None killed; we had one wounded.

Q. Do you remember any thing of the *Cambridge?*

A. No; I know nothing of her.

Q. Do you remember any thing of the *Rupert*'s Yawing?

A. Yes, I know that very well.

Q. At what time was that?

A. A little before we engaged the Five Sail.

Q. What was that done for?

A. In order to get nearer the Enemy.

Q. How was the Wind, when you yawed?

A. About North-Eaſt.

Q. Was it abaft the Beam?

A. About a Point abaft the Beam; but I am not certain.

Q. Were your Yards ſquare?

A. The Sails were all aback.

Q. Which Side did you begin to engage with?

A. The Starboard-ſide.

Q. Did you ever engage with the Larboard-ſide, till after you wore?

A. No.

Q. Recollect yourſelf:—Did you never fire the Larboard-Guns before you wore?

A. Yes; we fired them once, at the time of Yawing.

Q. Did you ſee the *Marlborough*, when her Maſts went away?

A. I did not ſee her, when her Maſts went away; but I ſaw her ſoon after.

Q. At what time did you ſee her after?

A. I believe it was about Three o'Clock.

Q. What

Q. What was you doing then?
A. We were under Sail.
Q. Was you firing then?
A. Yes.
Q. At what?
A. We were engaging the Five Sail, that were coming up.
Q. When you was Yawing, you ſay, you fired your Larboard Broadſide?
A. Yes.
Q. What did you fire at?
A. At the Enemy; and then we put our Helm aport, and brought our Starboard-Broadſide upon them.
Q. In what Poſition was the Enemy then?
A. Upon our Larboard-Quarter, when we fired the Larboard-Broadſide.
Q. How did you contrive to fire that Larboard Broadſide, clear of the *Royal Oak*?
A. The Aftermoſt Guns were not fired for fear of her.
Q. Whereabouts was the *Royal Oak* then?
A. I really can't ſay;—ſhe was aſtern of us.
Q. Were the Enemy open to Windward, or to Leeward, of the *Royal Oak*?
A. I don't know.
Preſident. I think this Evidence is of no Weight: He contradicts himſelf—*(To the Priſoner)*: Will you aſk him any Queſtions?
Priſoner. You ſee he is diffident; I have no Queſtions to aſk him.

Then he withdrew.

The Court adjourned till To-morrow Morning, at Eight o'Clock.

Priſoner. I forgot one Thing that is material, that I would aſk.
Court. Call him in again.
Priſoner. It is not this Witneſs; it is my Maſter: To know, whether I did not paſs to Leeward of the *Marlborough*, and hailed her; and aſked, How Captain *Cornwall* did; becauſe it was ſaid Yeſterday, That I paſſed to Windward of her.

The Court being adjourned, the Maſter was not called in.

The Sixth Day upon Captain JOHN AMBROSE'S *TRYAL,*

On Board His MAJESTY'S *Ship the* London, *at* Chatham,

FRIDAY, the 25th of *October*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, as were Yeſterday.

The Marſhal brought in the Priſoner.

And then the Witneſſes were ordered to be called in.

William Saiſe, Quarter-maſter, on board the *Rupert*, called in, and ſworn.

His Depoſition was read.

William Saiſe, *late Quarter-maſter of his Majeſty's Ship* Rupert, *at the Time of the late Engagement in the* Mediterranean, *between his Majeſty's Fleet, and the Combined Fleet of* France *and* Spain, *on the* 11*th* February, 1743. *maketh Oath*;

THAT when Admiral *Mathews* made the Signal for the Line of Battle ahead, in the Morning of the aforeſaid Day, the *Rupert* got into the Line, and continued in it; and did not, during any time, while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Rupert* bore down, at the ſame time the Admiral did, and brought to in the Line; and, juſt after ſhe brought to, the *Real*'s Second aſtern bore away before the Wind; upon which the *Rupert* ſtood after her: Whereupon ſhe run cloſe under the *Spaniſh*'s Admiral's Lee-Quarter; and then the *Rupert* brought to again, and lay with Topſails aback, to wait for the Five *Spaniſh* Ships aſtern, that were coming up; which were then about Four or Five Miles diſtant; and did not get up with the *Rupert*, till about Three o'Clock; and then ſhe began to fire at them, but not till ſome time after they had fired at her.

That, about Two o'Clock, Captain *Ambroſe* ordered the Maſter of the *Rupert* to hail the *Royal Oak*; and tell her, he intended to bear down to engage the Five ſternmoſt *Spaniſh* Ships; and deſire ſhe would bear down with him: That he does not know what Anſwer was made from the *Royal Oak*; but the *Rupert* thereupon edged down a little, and brought to again.

That it was not poſſible for the *Rupert* to get near enough to the *Real* and her Second, to do Execution, without being between Two Fires, and breaking the Line; becauſe ſhe muſt have got between the *Dorſetſhire* and *Eſſex*, and the *Spaniſh* Admiral's Second, and been expoſed to their Fire.

That a few Guns were, at firſt, fired from the *Rupert*, at too great a Diſtance; but, when Captain *Ambroſe* obſerved they did not reach

the Enemy, he ordered Firing to ceaſe; and afterwards cauſed Two or Three Guns to be fired, at a Diſtance of Time from each other: And, when he found the Shot would well reach the Enemy, he ordered Firing to be continued, tho' the Enemy had fired ſome time at the *Rupert*, and their Shot went far over her, before ſhe began to fire at all.

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering for their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their Firſt Courſe, they muſt have been cloſe along-ſide the *Rupert*.

That the *Rupert* engaged the Headmoſt and Second of the Five ſternmoſt Ships of the Enemy, about the Time the *Marlborough*'s Maſts fell; the Headmoſt of theſe Ships being then come up within about point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down to the *Real*.

That, when the Fireſhip blew up, ſhe was not above Half a Mile diſtant from the *Rupert*, and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, the Admiral wore to the Northward; upon which the *Rupert* ceaſed Firing, and paſſed to Windward of the Admiral and *Dorſetſhire*, and wore round after the *Dorſetſhire*; and was then engaged with the *Spaniſh* Ships, in paſſing by them.

That, this Deponent did not ſee any Signal of Diſtreſs made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement: Nor did he hear the *Rupert* hailed, from the *Royal Oak*, during the Engagement.

That, to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement, acted agreeable with the Naval Inſtructions and Diſcipline; and behaved with Conduct and Courage; and ſeveral times expreſſed his Uneaſineſs, that the Enemy's Five Ships were ſo long coming up.

his
William + *Saiſe*
Mark.

Sworn before me, this 20th Day of *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Helm.

Q. You ſay, you bore down with the Admiral?

A. Yes.

Q. Did you go ſo far to Leeward, as to bring up in a Line with him?

A. Yes; we did; or rather to Leeward of him.

Q. Did you bring up, in a Line with the *Marlborough*?

A. I did not take ſo much Notice of the *Marlborough* as I did of the Admiral.

Q. Was the Admiral engaging, when you brought up in the Line?

A. Yes.

Q. What did you do, when you got into the Line?

A. We brought to.

Q. What did you do after that?

A. Upon our Bringing up in the Line, the *Spaniſh* Admiral's Second bore away.

Q. What, the *Hercules?*

A. Yes.

Q. What did ſhe bear away for?

A. I ſuppoſe, to join the Five *Spaniſh* Ships.

Q. Had you fired then?

A. No.

Q. When did you begin to fire?

A. Not till the Headmoſt of the Five Ships came up.

Q. What time did you bring up in a Line with the Admiral?

A. About Half an Hour after One.

Q. What was the Diſtance of Time between your Bringing up in the Line, and your beginning to fire?

A. I believe, about Two Hours.

Q. What was you doing all that time?

A. Bearing down into the Track of the Five Ships coming up, after we had lain by a little time.

Q. You ſay, it was Two Hours, from the Time of your firſt coming into the Line, to the Time of your Engaging?

A. Yes.

Q. Conſider, you are upon your Oath; don't go on headlong; but conſider what you ſay, before you ſpeak.—What do you apprehend to be the Nature of an Oath?

A. To ſpeak the Truth.

Q. If you ſhould not do ſo, What is the Conſequence of falſe Swearing?

A. To loſe Soul and Body.

Q. Did you hear what was read to you Yeſterday?

A. Yes.

Court. You are liable to be hanged, if you don't declare the Truth.

Q. When you began to engage thoſe Five Ships, was you within Point-blank?

A. At firſt we were not; there were only Two of them came up firſt; and they fired at us a long time, before we fired at them.

Q. How long was it before you was near enough, or was you ever near enough, to do proper Execution upon thoſe Ships?

A. We were within a proper Diſtance to do Execution: About Three o'Clock we bore down, and brought to twice before that.

Q. Tell your whole Story, from the Beginning.

A. When the Admiral bore away in the Morning, he ſteered for the *French* Fleet; and we bore away with him.

A. What

Q. What Ship of the Enemy did you begin firſt to engage?

A. The Headmoſt of the Five, and her Second.

Q. At what time of the Day did you begin?

A. About Three o'Clock: I can't ſay exactly.

Q. Was any *Engliſh* Ship engaged with that Ship, before you engaged her?

A. I can't ſay.

Q. Where was the *Royal Oak*, when you began to engage?

A. I can't tell: I could not ſee her; for I was at the Helm.

Q. Did you ever hear any thing of her?

A. No.

Q. Can you tell, whether ſhe was in a Line with you?

A. I can't tell, whether ſhe was, or not.

Q. Did you ever hear, before you began to engage, any Ship hail your Ship?

A. No: We hailed the *Royal Oak*.

Q. Did you obſerve Captain *Ambroſe* to call a Conſultation of Officers upon the Quarter-deck, before you began to engage?

A. I can't remember: It might be ſo.

Q. Did you ever hear any-body ſay to Captain *Ambroſe*, If you bear down nearer, and break the Line, you'll be hanged for breaking your Inſtructions?

A. I ſaw the Maſter and Lieutenant talk to him; but I don't know what they ſaid.

Q. Did you, at any time, fire your Larboard-Guns, while you had your Larboard-Tack on board?

A. Yes, we did, when we yawed the Ship.

Q. What did you do then, at the Helm?

A. We put the Helm aſtarboard.

Q. What Guns did you fire then?

A. The Larboard-Guns, upon yawing the Ship; but I can't tell how many were fired.

Q. Where did you ſee the Enemy, when you brought your Larboard-Guns to bear?

A. Before the Beam.

Q. Did you ſee no *Engliſh* Ship upon your Quarter, or upon your Beam, at that time?

A. I ſaw the *Royal Oak* upon the Larboard-Bow.

Q. How far was ſhe upon your Larboard-Bow then?

A. About a Cable's Length, and an Half, or Two Cables Length.

Q. Did you hear any Orders given from the Quarter-deck, to forbear firing the After-Guns, when you fired the Foremoſt-Guns from the Larboard-ſide?

A. No.

Q. Are you ſatisfied, the After-Guns were fired, when the Ship yawed?

A. I can't tell what Guns were fired.

Q. After you fired your Larboard-Guns, did you yaw t'other Way, to bring your Starboard-Guns to bear again?

A. Yes,

Q. Had you a Compaſs in the Bittacle, by you?

A. Yes; but it did not ſtand, becauſe of the Firing.

Q. When you brought your Starboard Guns to bear, where was the *Royal Oak* then?

A. I loſt Sight of her then; ſhe was gone aſtern.

Q. Did you ſee her aſtern?

A. No.

Q. Then how do you know ſhe was aſtern?

A. She was upon our Bow, when our Head was to the Eaſtward; and, of courſe, when our Head came to the South-weſt, ſhe muſt be right aſtern of us.

Q. How was the Wind?

A. About North-Eaſt-and-by-North; I can't ſay to a Point.

Q. How was the Wind before you began to yaw, with reſpect to your Beam, before or abaft it?

A. I can't ſay.

Q. When you put your Helm aſtarboard, How was the Wind then?

A. I believe the Wind was about Eaſt; but it came to the Northward afterwards.

Q. Did you obſerve the Fireſhip blow up?

A. Yes.

Q. At what time was it?

A. About Four o'Clock, or ſomething after.

Q. Where was the Headmoſt of the Four *Spaniſh* ſternmoſt Ships, at that time, with you?

A. She was a Point abaft our Beam.

Q. Was you engaged with them then?

A. Yes.

Q. At what Diſtance?

A. About Three Cables Length, as I gueſs.

Q. Was there any other Ship of the *Engliſh* Squadron engaged with them at that time?

A. I can't tell.

Court. 'Tis ſtrange you ſhould not ſee the *Royal Oak* fire then?

Witneſs. The *Royal Oak* might be engaged then; ſhe was aſtern.

Q. At what time did you ſee the *Royal Oak* upon your Larboard-Bow?

A. About Three o'Clock.

Q. Did you obſerve any other Ship, beſides the *Royal Oak*, engage thoſe Ships?

A. No.

Q. Did you not ſee the *Cambridge* engage them?

A. No.

Q. Did you ever hear of the *Cambridge* engaging them?

A. Yes, I heard ſhe did; but I did not ſee her.

Q. Did you continue engaging thoſe Ships, all the time, from Three o'Clock, till the Admiral hauled down the Signal for Engaging?

A. From the Time we came up with them, we did continue engaging them, till we were obliged to haul our Wind from the Admiral, after he was wore, to let him go clear of us.

Q. And

Q. And did you not obſerve any other Ship engaging them, during that time?

A. No.

Q. Did you obſerve the *Dorſetſhire* engage that Day?

A. Yes.

Q. What Ship did ſhe engage?

A. The *Spaniſh* Admiral's Second.

Q. Did you not obſerve the *Eſſex* alſo engaging?

A. Yes.

Q. Where was ſhe then?

A. Upon our Weather-Bow.

Q. How far to Windward of you, if ſhe had been upon your Beam?

A. About Two Cables Length.

Q. Do you know nothing of a Ship aſtern of the *Spaniſh* Admiral's Second, and conſiderably ahead of the other Four Ships?

A. No, we did not engage that Ship.

Q. Was there not ſome Diſtance between the Second Ship aſtern of the *Spaniſh* Admiral, and the next Ship to him? Were the Five in a well-cloſed Line with each other?

A. The Firſt and Second were at ſome Diſtance from the Three laſt.

Q. How many of thoſe Ships engaged you at any one time?

A. The Two Headmoſt only, till towards the Evening; the reſt were about Half a Mile aſtern.

Q. How long did you engage thoſe Ships?

A. About an Hour and an Half, before we hauled our Wind.

Q. What Number of Men had you killed and wounded in that time, before you wore?

A. There were Men wounded; but whether before or after we wore, I can't tell; but we had none killed.

Q. How many had you wounded?

A. There were Five or Six.

Q. Are you ſure there were Five or Six?

A. I think ſo.

Q. How were they wounded?

A. I can't tell.

Q. Do you know any thing of a Bar-ſhot coming on board you, in any Part of the Action?

A. No, I don't know of any.

Q. Did any Shot hull you before you bore away?

A. Not that I know of.

Q. Did any Shot ſtrike your Maſts or Yards?

A. I don't know of any.

Q. Did you engage with Small-Arms in any Part of the Action?

A. I can't tell whether we did or not; I did not ſee any.

Q. If there had been any fired, ſhould you not have known it, as you was at the Helm?

A. I can't ſay, whether I ſhould or not.

Q. When you yawed your Ship, and fired the Larboard-Broadſide, which of the Enemy's Ships did you fire at?

A. The Two Headmoſt of the Five.

Q. Did you take notice, during the Time the *Marlborough*'s Maſts were gone, where ſhe lay, with reſpect to your Ship, while you lay with your Head to the Southward?

A. When we lay with our Heads to the Southward, the Admiral and *Marlborough* were both open upon our Larboard-Bow.

Q. How far was you then from the *Marlborough?*

A About Two Miles, or better, when ſhe had loſt her Maſts.

Q. At what o'Clock do you reckon that was?

A. It was ſomething after Three.

Q. How long was it after that, do you think, before the Fireſhip blew up?

A. She blew up about Half an Hour after Four.

Q. How near was you ſhot up to the Fireſhip, when ſhe blew up?

A. Within about Half a Mile.

Q. And how far was you from the *Marlborough* then?

A. I can give no Account of that; I can't give any Gueſs.

Q. Was you as near the Fireſhip as you was to the *Marlborough?*

A. We were nearer to the Fireſhip than to the *Marlborough*; we were to Leeward of the *Marlborough.*

Q. Do you remember nothing of Captain *Ambroſe*'s taking notice of a Shot, that whiſtled over the Quarter-deck of the *Rupert*; and did you not ſee the Stock of the *Royal Oak*'s Anchor hanging down in the Water?

A. No, I know nothing of it.

Q. Do you remember any thing of your hailing the *Royal Oak?*

A. Yes.

Q. What time was it?

A. Something better than Half an Hour after One.

Q. You ſay, You was in the Line at Half an Hour after One, and then you hailed the *Royal Oak.*

A. Yes.

Q. Then the *Royal Oak* muſt be in the Line as well as you: — Was it the Captain himſelf that hailed her?

A. No; it was the Maſter.

Q. Where was the *Royal Oak* then?

A. I can't tell:—The Maſter hailed her over the Quickwork, upon the Larboard-ſide of the Quarter-deck; but I could not ſee her.

Q. Which Way did the Maſter point his Face?

A. Aft.

Q. Was your Rigging cut before you wore, or after you wore?

A. Some was cut, before; but I can't tell which.

Q. What did you do, after the Maſter hailed the *Royal Oak?*

A. We put the Helm aweather, and bore down.

Q. Where

Q. Where was the *Spaniſh* Ships then? Were they directly to Leeward, or how?

A. Aſtern of us, a little upon our Starboard-Quarter.

Q. Then you put your Helm aweather, and ſtood to the Northward?

A. No, we ſtood to the Weſtward.

Q. How did the *Spaniſh* Ships bear from you, as you were going down?

A. Upon our Starboard-Bow:—After we bore away, they were upon our Starboard-Bow; but, before that, upon our Starboard-Quarter.

Q. How had you the Wind then?

A. We had it then upon the Larboard-Quarter.

Court. Then you were ſteering from the Enemy, inſtead of bearing down to them.

Q. You ſay, You put your Helm aweather, bore down, and brought thoſe Five Ships upon your Bow: How long did you continue with thoſe Ships upon your Bow?

A. A ſmall time; and then we brought to again.

Q. When you brought to again, was the Enemy within Gun-ſhot of you?

A. Soon after we brought to, their Shot went a great Way over us.

Q. Did the Shot that went over you riſe again, or fall dead in the Water?

A. I did not ſee them; I only heard them fly over.

Q. Do you remember how the Wind was, when you bore to the Weſtward?

A. I can't ſay how the Wind was then.

Q. Did you alter the Trimming of your Sails?

A. I can't tell whether we did or not.

Q. When you was ſtanding towards the Enemy, after you bore away, Did the Enemy fire at you firſt, or you at them?

A. The Enemy fired firſt.

Q. So, when the Enemy fired, and you found their Shot reached you, you brought up?

A. Yes.

Q. You ſaid juſt now, They fired ſeveral times, before you fired?

A. I know they fired before us.

Q. What Ships were there aſtern of the *Real?*

A. There was one Ship.

Q. Why did you not go up, and attack that Ship, inſtead of lying inactive for Two Hours together?

A. I can't tell.

Q. After you bore down towards thoſe Five Ships, Had you brought up, before the Enemy fired?

A. I can't ſay whether we had or not.

Priſoner asked,

Q. Do you remember, whether I did, or did not, run up to you, and the other Man at the Helm, and cry, Zounds, keep the Helm aweather, and run down, till we get the Admiral's Maſts in one?

A. Yes; you did ſay thoſe Words, or to that Purpoſe.

Here the Priſoner was told by the Court, to ſtate his Queſtions fairly, without putting Words into the Witneſs's Mouth.

The Priſoner replied,

I will write the Queſtions down, if you pleaſe:—I will aſk no more Queſtions, if you don't think proper.

Court. Aſk what Queſtions you think proper.

Q. What did I ſay to you, when the Admiral bore down to engage?

A. You ſaid, Zounds, put the Helm aweather, and bear down.

Q. At what time was this?

A. It was between Twelve and One.

Then the Proſecutor for the Crown delivered to the Judge-Advocate a Paper, containing ſeveral Queſtions, which he deſired might be aſked Captain *Ambroſe*'s Witneſſes: Which being allowed of by the Court, the Judge-Advocate then asked them, as follows;

Q. When the Admiral ſtood to the Northward, on the Starboard-tack, after his Wearing in the Evening, what Station was the *Rupert* in? Was ſhe the Firſt, Second, or Third Ship, ahead aſtern of the Admiral?

A. The Second Ship aſtern of the Admiral.

Q. What Ships were between the Admiral and *Rupert*, on the Starboard-tack, in the Evening of the Eleventh of *February?*

A. Only the *Dorſetſhire.*

Q. What Ship was next ahead of the *Rupert*, and what Ship next aſtern of her, on the Starboard-tack, in the Evening of the Eleventh of *February?*

A. The *Dorſetſhire* was next ahead; but I don't know what Ship was next aſtern.

Q. Did the *Rupert* receive any, and how many, Shot, in her Hull or Maſts, in that whole Day's Action?

A. I can't tell.

Q. How many did ſhe receive on the Starboard-ſide, and how many on the Larboard-ſide?

A. I can't tell.

Q. Did the Admiral and his Diviſion, in ſtanding to the Northward, after he wore in the Evening, paſs to Windward, or to Leeward, of the *Marlborough?*

A. I can't ſay.

Q. Which Ships of that Diviſion paſſed to Windward, and which to Leeward, of the *Marlborough?*

A. We went to Leeward of the *Marlborough*; but I can't tell as to the reſt of the Ships.

Then he withdrew.

Lieutenant *Thomas Evans*, of the *Rupert*, was called in, and ſworn.

His Depoſition read:

Lieutenant Thomas Evans, *late Lieutenant of his Majeſty's Ship the* Rupert, *at the Time of the late Engagement in the* Mediterranean,

between his Majeſty's Fleet, and the Combined Fleet of France *and* Spain, *on the* 11*th* February, 1743. *maketh Oath*;

THAT when Admiral *Mathews* made the Signal for the Line of Battle ahead, in the Morning of the aforeſaid Day, the *Rupert* got into the Line, and continued in it; and did not, during any time, while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorſetſhire* and *Eſſex* was ſtationed between the *Marlborough* and *Rupert*, and were to Windward of the *Rupert*, and began to fire quickly after the Admiral.

That the *Rupert* bore down at the ſame time the Admiral did, and brought to in the Line; and, juſt after ſhe brought to, the *Real*'s Second aſtern bore away before the Wind, and then hauled the Wind again, run cloſe under the *Spaniſh* Admiral's Lee-Quarter; and then the *Rupert* brought to again, to wait for the Five Ships aſtern, that were coming up; which were then about Four or Five Miles diſtant, and did not get up with the *Rupert*, till about Three o'Clock: And then ſhe began to fire at them; but not till ſome time after they had fired at her.

That it was not poſſible for the *Rupert* to get near enough to the *Real*, and her Second, to do Execution, without being between Two Fires; becauſe ſhe muſt have gone between the *Dorſetſhire* and *Eſſex*, and the *Spaniſh* Admiral's Second, and been expoſed to their Fire.

That a few Guns were at firſt fired from the *Rupert*, at too great a Diſtance; but, when Captain *Ambroſe* obſerved they did not reach the Enemy, he ordered Firing to ceaſe; and afterwards cauſed Two or Three Guns to be fired at a Diſtance of Time from each other; and, when he found the Shot would well reach the Enemy, he ordered Firing to be continued, though the Enemy had fired ſome time at the *Rupert*, and their Shot went far over her, before ſhe began to fire at all.

That, at the Firſt Part of the Engagement, the *Rupert*'s Guns lay on the Beds; and afterwards the Beds, with a Port Wedge on them.

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering for their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their firſt Courſe, they muſt have been cloſe along-ſide the *Rupert*.

That the *Rupert* engaged the ſternmoſt Ships of the Enemy, about the time the *Marlborough*'s Maſts fell; the Headmoſt of thoſe Ships being then come up within about point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down to the *Real*.

That, when the Fireſhip blew up, ſhe was not above Half a Mile diſtant from the *Rupert*, and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter: That, about Five o'Clock, the Admiral wore to the Northward: Upon which the *Rupert* ceaſed firing; and was then again engaged with the *Spaniſh* Ships, in paſſing by them, with her Larboard-Guns: That this Deponent did not ſee any Signal of Diſtreſs, made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement; nor did he hear the *Rupert* hailed from the *Royal Oak*, during the Engagement. That to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement, acted agreeable to the Naval Inſtructions and Diſcipline; and behaved with Courage; and ſeveral times expreſſed his Uneaſineſs, that the Enemy's Five Ships were ſo long coming up.

Thomas Evans.

Sworn before me, this 20th Day of *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?
A. Upon the Gun-deck.
Q. You ſay, You was ſoon in a Line with the Admiral, after he began to fire?
A. Yes; ſoon afterwards.
Q. Where was the *Marlborough* and *Eſſex*?
A. The *Marlborough* was rather to Leeward of Mr. *Mathews*, though very little, and in a very good Line; and the *Eſſex* greatly to Windward.
Q. Were the *Dorſetſhire* and *Eſſex* in a Line with the Admiral?
A. No.
Q. After you was in the Line, How long did you lie inactive?
A. About Two Hours: I believe it was about Three o'Clock before the *Spaniſh* Ships came up.
Q. What Diſtance was you from the *Hercules*, the *Spaniſh* Admiral's Second?
A. About a Mile or better.
Q. Did any Ship engage the *Hercules*?
A. The *Dorſetſhire* began to engage her, ſoon after the Admiral began.
Q. Was ſhe within point-blank Shot of her?
A. She was within Shot.
Q. What Shot?
A. Within random Shot, but not within Point-blank.
Q. As you was in a Line with the Admiral, and ſo near the *Dorſetſhire*, How came you not to go ahead, and engage the *Hercules*?
Q. Becauſe we ſhould have the Fire both of the *Dorſetſhire* and *Eſſex*, which were firing at her.
Court. But they would have ceaſed Firing, to be ſure, if you had done that.
Witneſs. I can't be a Judge whether they would or not.
Q. How long did you continue inactive, before you began to engage?
A. About Two Hours after Mr. *Mathews* began:

began: We did not engage till about Three o'Clock.

Q. Did you lie to till you began to engage?

A. As I was upon Deck only now-and-then, I don't know whether any Alteration was made in the Sails, or whether we lay to all the time, or not.

Q. Did you continue in a Line with the Admiral, from the time you brought to, till you gan to engage?

A. Yes.

Q. Where was the *Royal Oak* during that time?

A. Sometimes right aſtern, and ſometimes a little upon our Weather-Quarter: I ſaw her out of the Weather-Gun Room-port; and ſhe was generally about Half a Cable's Length from us; but never more than a Cable's Length.

Q. Did the *Royal Oak*, or You, begin to engage firſt?

A. The *Royal Oak*.

Q. Did ſhe continue to engage the whole time you was engaged?

A. I can't ſay, being quartered below, I was buſy while we were engaged.

Q. During the Engagement, Did you look out?

A. Not often.

Q. How was ſhe ſituated all that time?

A. When I ſaw her, ſhe was right aſtern, or a little on our Weather-Quarter.

Q. What did you do, after you left off Engaging?

A. We engaged afterwards with our Larboard-Guns.—I was ordered to ſecure the Guns, and get the Larboard-Guns ready; but what we were doing, I can't ſay.

Q. Did you lie inactive any time after you began to engage, before the Admiral wore?

A. I can't tell; I was buſy, ſecuring the Guns.

Q. Did you never ſee the *Royal Oak*, from the time you left off Engaging, till you wore?

A. I ſaw her ſometimes, when we were engaging; but I never ſaw her after we left off Engaging, till the next Day.

Q. Was you upon Deck, when Mr. *Mathews* bore away with the *Marlborough*?

A. Yes.

Q. Did you continue upon Deck, till you brought to?

A. Yes: There was no Ship for us to engage then.

Q. And was you in a Line with the Admiral, when you brought to?

A. Yes; I think we were.

Q. Did you remain in a Line with the Admiral, from the time of your Bringing to, till the Enemy came up to you?

A. Yes.

Q. How long was that?

A. About Two Hours.

Q. When they came up to you, and engaged with you, Was you at a proper Diſtance to do Execution?

A. At firſt we were not; ſeveral Guns were fired, till Orders were given to ceaſe Firing: And then we came nearer; and Captain *Ambroſe* ordered ſome Guns to be tried upon a Level; and then we were within Reach.

Q. What time was that?

A. About Three o'Clock.—We lay ſome time, and then fired again.

Q. Did any Shot hull you? Or were your Maſts and Yards wounded much?

A. Some Shot ſtruck our Hull during the Action, but none to hurt us much; and our Rigging was cut.

Q. Was it before or after Wearing?

A. I can't tell.—Before we fired, one Shot ſtruck the Booms; and, after we wore, ſome ſtruck our Hull, when we engaged with the Larboard-Guns.

Q. Did you hear any Shot ſtrike her where you was quartered?

A. No.

Q. Were the Guns laid down, when you fired?

A. They were upon the Beds, when we began; but afterwards a Wedge was put under them.

Q. You ſay it was Three o'Clock before you began and continued Firing?

A. Yes.

Q. In your Depoſition, you ſay, That the *Hercules* bore away, and that you followed her: And you ſay, That the *Dorſetſhire* and *Eſſex* were to Windward.—What could force the *Hercules* to bear away before the Wind?

A. I can't tell: She did not continue before it Five Minutes, before ſhe hauled her Wind, and got under her Admiral's Lee-Quarter.—We edged after her, but very little.

Q. Did you ever fire at the *Hercules*?

A. No; we never fired at the *Hercules*.

Q. When you fired your Larboard-Broadſide, What Ship did you then fire at?

Witneſs. What, before we wore?

Court. Yes.

A. At the Headmoſt of the Five *Spaniſh* Ships.

Q. How did ſhe then bear, with reſpect to your Ship?

A. A little abaft the Beam.

Q. How could you continue to fire clear of the *Royal Oak* then?

A. I believe, ſhe was to Windward of us: I know we fired our Larboard-Guns once; but I did not ſee the *Royal Oak* then.

Q. Did you engage thoſe Ships ſingly from Three o'Clock to the time of Wearing?

A. The *Royal Oak* fired.

Q. Juſt now you ſaid, You did not ſee the *Royal Oak*.

A. I don't remember, that I ſaw her at the Time we fired our Larboard-Guns.

Q. Did you obſerve any Damage you did to the Enemy?

A. I ſaw one of their Fore-top-gallant Sheets ſhot; but whether from us, or the *Royal Oak*, I can't tell.

Q. You

Q. You ſay in your Depoſition, You was Half a Mile from the Fireſhip, after ſhe blew up?

A. Yes.

Q. What Diſtance was you from the *Marlborough* at that time?

A. I can't tell: I did not then obſerve the *Marlborough.*

Q. It is very extraordinary you did not: Where was you with reſpect to the *Marlborough?*

A. I believe, ſhe was greatly to Windward of us; but I don't know; I did not ſee her then; for I was between Decks, and the Fireſhip was to Leeward of the *Marlborough.*

Q. Then you was nearer the Fireſhip than the *Marlborough* was.

A. I did not ſee the *Marlborough.*

Q. Do you remember, while you lay inactive, till thoſe Ships came up, any Conſultation upon the Quarter-deck between the Captain, yourſelf, the Maſter, and the other Lieutenants, about Bearing down?

A. No; I know of no ſuch Conſultation.

Q. Did you hear the Maſter, or any one, ſay to the Captain, If you bear down more to Leeward, you'll be hanged for breaking your Fighting Inſtructions?

A. No; I heard no ſuch thing.

Q. Was you the Firſt Lieutenant?

A. No; I was the Second Lieutenant.

Q. Did you hear any thing of the *Royal Oak*'s ſetting her Foreſail, hauling out her Mizen, and running upon your Weather-Beam?

A. I heard ſo; but I don't know it.

Q. Did you hear any thing of a Shot that went over your Ship, and cut the Stopper of the *Royal Oak*'s Anchor, when ſhe lay to Windward upon your Beam?

A. I heard ſo; but I did not ſee it.

Q. As you are an Officer in the Service, and no doubt would be glad to have all the World think you were qualified for that Office, Do you think, when you fired at thoſe *Spaniſh* ſternmoſt Ships, that you was within a proper Diſtance to engage, as an *Engliſh* Man of War ought to engage?

A. No;—we were not; for we were not within Muſquet-ſhot; for as thoſe Ships came up, and neared us, they edged away.

Q. Did you keep in the Line?

A. I don't know, that we ever hauled out of the Line; and, had they held their Courſe, they would have been as near to us, as the *Real* was to the *Marlborough.*

Q. Do you remember any thing of Hailing between you and the *Royal Oak?*

A. I have heard People ſay ſo.—I have heard the Maſter frequently ſay ſo, who hailed her; but I heard nothing of it myſelf.

Q. Did you ever hear, that the *Royal Oak* hailed you?

A. No; never till after Captain *Ambroſe* was confined: I heard it at *Gibraltar* firſt.

Q. You ſay, You was in a Line with the Admiral, when you firſt brought up; and that you was Two Hours inactive; Are you ſure, that, during thoſe Two Hours, you was in a Line with the Admiral and *Marlborough?*

A. Yes.

Q. How do you know?

A. They were right ahead.

Q. Had you their Maſts in One?

A. I can't ſay that;—I did not obſerve their Maſts.

Q. Might you not have been to Windward of the Admiral, and yet be in a Line with him?

Witneſs. I don't know what you mean.

Q. Was you as far to Leeward as the Admiral?

A. Yes.

Q. From Three o'Clock, to the time you wore, How many of thoſe *Spaniſh* Ships had ſhot abreaſt of you?

A. When we left off Firing, the headmoſt Ship was much about abreaſt of us; and the Second we engaged upon our Quarter.

Q. Could you fire at both together?

A. We ſometimes fired at one, and ſometimes at the other.

Q. How was it poſſible for you to engage Two Ships for Two Hours, within Three Cables Length, without being damaged?

A. I don't ſay we were within Three Cables Length; they were not come up with us, when we began to engage.

Q. What was the neareſt Diſtance you was from the Enemy before Wearing?

A. Three Cables Length.

Q. How long did you engage ſo near?

A. A very little while; for they did not come up near enough.

Q. Before that, at what Diſtance might you engage?

A. About Half a Mile: They were a long time coming up.

Q. How long had you ceaſed Firing, before the Admiral wore?

A. I can't tell; I did not ſee him wear.

Q. How long had you ceaſed Firing, before you wore?

A. We ceaſed Firing about Half an Hour, between firing our Starboard and Larboard-Guns.

Q. As you lay in the Line Two Hours inactive, Did you ſee the *Dorſetſhire* and *Eſſex*, in thoſe Two Hours, endeavour to lay themſelves in a Line between you and the Admiral?

A. No; they were to Windward, and I did not obſerve them endeavour to cloſe the Line.

Q. While you lay inactive, What Diſtance was you from the *Marlborough?*

A. About a Mile.

Q. Did thoſe Two Ships keep to Windward out of the Line, while you lay inactive?

A. Yes; they did not cloſe the Line.

Q. When the Enemy were bearing away, you ſay, You could not follow them, becauſe of

of going out of the Line.—When the Enemy had bore away out of the Reach of your Shot, Could you not then have cloſed the Line to fire at the *Hercules?*

A. It was juſt before Wearing, that thoſe Ships had edged away.

Q. When you lay in your Station, in a Line with the Admiral, How did the *Eſſex* then bear?

A. Three or Four Points upon our Larboard-Bow.

Q. How far diſtant?

A. Better than Half a Mile.

Q. Did you ſee the Fireſhip blow up?

A. No; but I ſaw the Smoke upon the Water for ſome time.

Q. Did you ſee the Flames?

A. I ſaw nothing but black thick Smoke.

Q. Do you remember any thing of a Conſultation, Whether you ſhould go to Windward or Leeward of the Flames?

A. I don't remember any ſuch Conſultation.

Q. Do you think, if there was a Body of Flames upon the Water, and there was a Diſpute or Conſultation on board the *Rupert*, Whether it was beſt to go to Leeward or to Windward of it, that you ſhould not know it?

A. I had no Notion of it: I did not hear any thing of our being likely to be ſet on Fire; nor did I hear any thing of a Conſultation about it; but I heard of it afterwards.

The Court obſerved, That it was very extraordinary, the Witneſs ſhould not hear of it; becauſe, if they had been in any Danger of being on Fire, by going too near the Flames of the Fireſhip, the whole Ship's Company muſt have been alarmed at it.

Q. Did you ever ſee the *Royal Oak* to Leeward of the *Rupert?*

A. No; I never ſaw her to Leeward: I can't ſay, ſhe never was to Leeward of us.

Q. How did your Guns lie in the Carriages, when you fired at the Enemy?

A. The former Part of the Firing, they lay upon the Beds; the latter Part, there was a Port-Wedge under them.

Q. Did your Ship fetch any deep Lee-Rolls?

A. She did roll—There was a Swell.

Q. How far was you from the *Marlborough?*

A. About a Mile.

Q. After you fired your Larboard-Guns, How long was it before you fired your Starboard-Guns?

A. Preſently after: As ſoon as we had ſecured our Starboard, we fired our Larboard-Guns.

Q. Did you not afterwards fire your Larboard-Guns again?

A. No; not till the Evening after we wore.

Q. Did you take in any Water?

A. We took ſome in at our Ports.

Q. Did you point any of the Larboard-Guns yourſelf?

A. Yes.

Q. At what Ship?

A. At the Headmoſt of the Five Sail.

Q. Did you fire your whole Tier of Guns?

A. No: One or Two of the Foremoſt Guns were not fired; but all the Aftermoſt Guns were fired.

Q. Did you obſerve any Ship on your Larboard-ſide, at that time?

A. No, I did not obſerve any.

Then the Queſtions delivered in by the Proſecutors for the Crown, were asked, as follows:

Q. When the Admiral ſtood to the Northward, on the Starboard-tack, after Wearing, in the Evening, What Station was the *Rupert* in? Was ſhe the Firſt, Second, or Third Ship aſtern or ahead of the Admiral?

A. I can't tell, being below at my Quarters; but, I believe, we were after the *Dorſetſhire*; but I can't ſay, to my own Knowlege.

Q. What Ships were between the Admiral and *Rupert*, upon the Starboard-tack?

A. I don't know.

Q. What Ships were next ahead, and what next aſtern of the *Rupert*, on the Starboard-tack?

A. I can't tell, what Ship was next ahead; but the *Eſſex* was next aſtern.

Q. Did the *Rupert* receive any, and how many Shot, in her Hull and Maſts, in that whole Day's Action?

A. She received ſome Shot in her Hull; I don't know how many; but none in her Maſts.

Q. How many did ſhe receive in the Starboard-ſide, and how many in the Larboard-ſide?

A. One came through the Larboard-ſide, upon the Lower-deck, after we wore; and broke the Axle-tree of one of the Guns.

Q. Did the Admiral, and his Diviſion, in ſtanding to the Northward, after Wearing, go to Windward, or to Leeward, of the *Marlborough?*

A. I can't ſay.

Q. Did your Ship paſs to Windward, or to Leeward, of the *Marlborough?*

A. I can't ſay.

Court asked,

Q. Did the *Royal Oak* bear down with you, and bring to, in a Line with the Admiral, when you did?

A. Yes, ſhe did; ſhe was very near us.

Q. Did you never ſee her to Leeward of your Ship?

A. No, I never did; but I can't ſay, ſhe was not.

Priſoner aſked,

Q. Did I ſend my Aid du Camp down to you, to deſire you to lay a Gun upon a Level, to fire a Point-blank upon the Enemy, to ſee whether it would reach?

A. Yes.

Q. Was it you yourſelf, or any-body elſe, that fired that Gun?

A. It was fired; but I don't remember, who fired it.

Q. Did you ſee the Shot take place?

A. No, I did not.

Q. Was it upon that Shot being fired, that general Orders were given, to fire a whole Broadſide?

A. Yes; preſently after.

Q. Was you, or was you not, from the firſt time we began to engage thoſe Ships, ever upon Deck, till we left off Firing?

A. I don't remember, that I was.

Q. Then, can you, or can you not, be a Judge of the Working of the Ship; or what paſſed upon Deck?

A. No, I can't.

Then he withdrew.

John Watts, Cockſwain on board the *Rupert*, was called in, and ſworn.

His Depoſition was read.

John Watts, *Cockſwain of his Majeſty's Ship the* Rupert, *at the Time of the late Engagement in the* Mediterranean, *between his Majeſty's Fleet, and the Combined Fleet of* France *and* Spain, *on the* 11*th* February, 1743. *maketh Oath*;

THAT, when Admiral *Mathews* made the Signal for the Line of Battle ahead, in the Morning of the aforeſaid Day, the *Rupert* got into the Line, and continued in it; and did not, during any time while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorſetſhire* and *Eſſex* were ſtationed between the *Marlborough* and *Rupert*; and were to Windward of the *Rupert*; and began to fire quickly after the Admiral.

That the *Rupert* bore down at the ſame time the Admiral did, and brought to in the Line; and, juſt after ſhe brought to, the *Real*'s Second aſtern bore away before the Wind: Upon which the *Rupert* ſtood after her: Whereupon ſhe run cloſe under the *Spaniſh* Admiral's Lee-Quarter; and then the *Rupert* brought to again, and lay with Topſails aback, to wait for the Five *Spaniſh* Ships aſtern, that were coming up, which were then about Four or Five Miles diſtant; and did not get up with the *Rupert* till about Three o'Clock; and then ſhe began to fire at them, but not till ſome time after they had fired at her.

That it was not poſſible for the *Rupert* to get near enough to the *Real*, and her Second, to do Execution, without being between Two Fires, and breaking the Line; becauſe ſhe muſt have gone between the *Dorſetſhire* and *Eſſex*, and the *Spaniſh* Admiral's Second, and been expoſed to their Fire.

That a few Guns were, at firſt, fired from the *Rupert*, at too great a Diſtance; but, when Captain *Ambroſe* obſerved they did not reach the Enemy, he ordered Firing to ceaſe; and afterwards cauſed Two or Three Guns to be fired at a Diſtance of Time from each other; and, when he found the Shot would well reach the Enemy, he ordered Firing to be continued, though the Enemy had fired ſome time at the *Rupert*, and their Shot went far over her, before ſhe began to fire at all.

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering for their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their firſt Courſe, they muſt have been cloſe along-ſide the *Rupert*.

That the *Rupert* engaged the Second and Headmoſt of the Five ſternmoſt Ships of the Enemy, about the time the *Marlborough*'s Maſts fell, the Headmoſt of thoſe Ships being then come up within about point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down to the *Real*.

That, when the Fireſhip blew up, ſhe was not above Half a Mile diſtant from the *Rupert*, and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, the Admiral wore to the Northward: Upon which the *Rupert* ceaſed Firing, hauled her Wind, and paſſed to Windward of the Admiral and *Dorſetſhire*, and wore round after the *Dorſetſhire*; and was then again engaged with the *Spaniſh* Ships, in paſſing by them.

That this Deponent did not ſee any Signal of Diſtreſs made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement; nor did he hear the *Rupert* hailed, from the *Royal Oak*, during the Engagement.

That, to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement, acted agreeable to the Naval Inſtructions and Diſcipline; and behaved with Conduct and Courage; and ſeveral times expreſſed his Uneaſineſs, that the Enemy's Five Ships were ſo long coming up.

John Watts.

Sworn before me, this 20th *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Quarter-deck.

Q. You ſay, You bore down after the Admiral, and got into the Line very ſoon after the Admiral.

A. Yes.

Q. Did you begin to engage?

A. We did not begin to engage till ſome time after.

Q. Where were the *Dorſetſhire* and *Eſſex*, when you was hauled up in a Line with the Admiral?

A. The *Dorſetſhire* Half a Point, and the *Eſſex* about a Point, upon our Weather-Bow.

Q. What Diſtance was you from the *Hercules*, the *Real*'s Second?

A. About a Mile.

Q. How long did you lie inactive?

A. About a Quarter of an Hour.

Q. What did you do during that Quarter of an Hour?

A. Our Topſails were full; we were under Way during that Time. — We lay, about a Quarter of an Hour, with our Topſails full.— The *Spaniſh* Admiral's Second then bore away: Then our Captain ordered the Fore-ſtay-ſail to be hoiſted, and the Foreſail to be ſet:—As ſoon as ſhe ſaw us before the Wind, ſhe hauled her Wind again, and run under her Admiral's Quarter:—Then we brought to again; and were then to Leeward of the Line; and we laid our Topſails aback, and yawed the Ship for ſome time, putting the Helm ſometimes aſtarboard, and ſometimes aport.

Q. Did you ever fire at the *Hercules?*

A. No, we never fired at her.

Q. What Diſtance might ſhe be from you, at the neareſt?

A. About Three-quarters of a Mile. — As ſoon as ſhe ſaw us bear down to her, ſhe hauled her Wind again.

Q. Who did you engage, after Lying by a Quarter of an Hour?

A. We engaged none, till about Two, or Half an Hour after Two.

Q. How long was it, after you brought to in the Line, before you began to fire?

A. About an Hour.

Q. He don't underſtand it—Are you a *Scotchman?*

A. Yes.

Q. Did not you ſay, That, about a Quarter of an Hour after you brought to, you began to fire?

A. No: It was about a Quarter of an Hour after we brought to, before we bore away.

Q. How long was it, after you got firſt into a Line with the Admiral, before you engaged thoſe *Spaniſh* ſternmoſt Ships?

A. Better than an Hour: — We fired ſome Shot point-blank, before we began to engage. The Captain ordered ſeveral Guns to be fired, to try the Diſtance; and found they would not do: And then he ordered the Firing to be left off.

Q. What might be the whole Time, till you began to engage?

A. About an Hour and a Quarter.

Q. How long before you began to engage, was it that you fired the firſt of thoſe Shot to try?

A. About Half an Hour.

Q. Did you ſee the *Marlborough*'s Maſts go away?

A. Yes.

Q. What was you doing then?

A. We were firing at the Enemy; we had juſt began to engage.

Q. Was you then near enough to do Execution?

A. Yes, I believe we were, at the time her Maſts went away.

Q. How do you judge, you was near enough to do Execution?

A. Becauſe we had tried our Guns Half an Hour before we began to engage: When we firſt fired, I ſaw we ſhot away one of her Top-gallant-ſheets; and the Enemy's Shot went over us a great way.

Q. What was you doing, when the *Marlborough*'s Maſts went away?

A. We had juſt began to engage.

Q. What Diſtance was you then from the Enemy?

A. I believe, about Three Cables Length.

Q. How long was you engaged with thoſe Ships?

A. About an Hour and an Half.

Q. Had you any Men killed or wounded in that Hour and an Half?

A. None killed: There were ſome wounded; but I can't tell how many.— When we yawed the Ship, and fired our Larboard-Broadſide, we had one Man wounded.

Q. What was you doing, when the Fireſhip blew up?

A. We were engaged with the Headmoſt of the Five Sail.

Q. Was any other Ship engaged with you?

A. Yes; the *Royal Oak*.

Q. How did ſhe then bear from you?

A. Upon our Weather-Quarter.

Q. How much upon your Weather-Quarter?

A. About a Point and an Half, or Two Points; I can't tell exactly.

Q. Was ſhe engaged all that time?

A. She fired ſome time before us: She was firing, when we fired point-blank Shot.

Q. What Diſtance was ſhe from you?

A. I believe, about Two Cables Length, or better; but I am not certain.

Q. Did ſhe continue Engaging all the time in that Station, and at that Diſtance?

A. She began to engage Half an Hour before us: She was firing, when we fired our Trial-Guns; but, I can't ſay, when ſhe left off.

Q. Was ſhe to Windward or to Leeward of you, when you fired thoſe Trial-Guns?

A. She was to Windward of us.

Q. Was the *Royal Oak* never aſtern, or to Leeward, of the *Rupert?*

A. I never ſaw her right aſtern the whole Day, but always to Windward, except when our Ship fell off.

Q. When you yawed, to bring your Larboard-Guns upon the Enemy, Do you remember any Orders, ſent down to the Commanding Officer on the Lower-deck, to forbear firing the Quarter-Guns, but to fire the Bow-Guns?

A. I don't remember any ſuch Orders being ſent; I fired one of the Quarter-deck Larboard-Guns myſelf.

Q. Was

Q. Was you upon the Quarter-deck all the time of the Action?

A. Yes.

Q. Was you near Captain *Ambroſe*?

A. Yes, very near.

Q. What Time of the Day was it, that Captain *Ambroſe* ſent for the Officers upon the Quarter-deck, to conſult them, Whether he ſhould go down nearer the Enemy?

A. Between Two and Three o'Clock; it was ſome time after Two; but I can't be poſitive as to the Time.

Q. Did you hear any body ſay to Captain *Ambroſe*, Sir, If you go to Leeward of the Line, you'll be hanged for breaking the Fighting Inſtructions?

A. I heard Lieutenant *Le Craſs*, the Firſt Lieutenant, ſay to the Captain, We are now in a Line: If you break it, you may be blamed.

Q. Did you, or did you not, then bear down?

A. Yes, we did, towards the Five Ships coming up.

Q. How far?

A. Within the Track of thoſe Five Ships.

Q. How did the *Marlborough* then bear from you?

A. A Point, or a Point and an Half, upon our Larboard-Bow:—I don't know how much; but ſhe was wide upon our Larboard-Bow.

Q. Did your Ship then lie parallel with the Admiral and *Marlborough?*— Did her Head lie as theirs did?

A. Yes; her Head lay ſo; and ſhe was to Leeward of both.

Q. Did you continue in the Station, in which you firſt brought up in a Line with the Admiral and *Marlborough*, till you engaged the ſternmoſt Ships?

A. No:— We bore down at firſt after the *Spaniſh* Admiral's Second; and afterwards, we brought to again, to Leeward of the Line; and then, after a Conſultation with the Officers, we bore down again, to meet the Five Ships.

Q. Did you continue in your Station till the Enemy came up, or did you bear down to them?

A. We bore down to them; we bore down to the *Spaniſh* Admiral's Second; then we brought to, and were to Leeward of the Line.

Q. When you was to Leeward of the Line, Did you engage thoſe Five Ships?

A. No, not then.

Q. You ſay, You bore down to Leeward of the Line, and brought to again; then you remained there till they came up to you: Did not you?

A. No.

The Judge Advocate then read his Firſt Anſwer, relating to this Point; *viz.* "We bore "down at firſt after the *Spaniſh* Admiral's "Second; and afterwards we brought to "again, to Leeward of the Line; and then, "after a Conſultation with the Officers, we "bore down again, to meet the Five Ships."

Witneſs. That is my Anſwer.

Q. How long did you continue engaging thoſe Five Ships?

A. About an Hour and an Half.

Q. How long had you left off Engaging, before the Admiral wore?

A. We had not left off Engaging, when the Admiral wore.

Q. Did you ſee the Fireſhip blow up?

A. Yes.

Q. What Diſtance was you then from her?

A. Pretty near Half a Mile.

Q. How far was you then from the *Marlborough?*

A. The *Marlborough* was then towing out of the Line; and we might be about Half a Mile, or Three-quarters of a Mile, from her; but I don't know exactly.

Q. When you was engaging thoſe *Spaniſh* Ships, Did you obſerve a Shot come over you, and ſtrike the Stopper of the *Royal Oak*'s Anchor?

A. I did not ſee it; but I heard People ſay ſomething of it:— I heard, that a Shot ſtruck our Booms, and carried away the Sails that lay upon them, and then ſtruck the Stopper of the *Royal Oak*'s Anchor.

Q. Where was the *Royal Oak* then?

A. Juſt upon our Weather-Quarter, almoſt as far as the Main-Chains.

Q. At what Diſtance was ſhe from you?

A. She was not far from us; I believe, better than a Cable's Length.

Q. Where was the Enemy then?

A. Upon our Starboard-Quarter.

Q. Do you think your Booms were not as high, or higher, than the *Royal Oak*'s Anchor at the Bow?

A. I did not ſee it myſelf; it is only what I heard.

Q. Did you in the Evening, when you was going to wear, ſee any Fire upon the Water, the Remains of the Fireſhip?

A. No; not when we wore.

Q. Do you remember any thing of a Pucker in the Ship, in order to avoid any Flames, from the Remains of the Fireſhip?

A. Yes; I ſaw the Flames juſt ahead; and the Captain ordered the Helm aſtarboard, to keep to Windward of thoſe Flames.

Q. When was that?

A. A little after ſhe blew up.

Q. When the Fireſhip blew up, Was the *Real* nearer to you, or to the *Marlborough?*

A. I believe, much at the ſame Diſtance; for the *Marlborough* was then towing out of the Line.

Q. How was the *Marlborough* then, with regard to you?

A. She was quite wide of the Cat-head, away with our Larboard Fore-Chains.

Q. If

Q. If the *Marlborough* had been towed right to Leeward, Would ſhe not have paſſed between you and the Fireſhip?

A. We were then cloſe on board the Fireſhip.

Q. Why don't you anſwer the Queſtion?

A. Before the Fire was extinguiſhed, we were cloſe to her; very nigh.

Q. How far was you from the Fireſhip, when ſhe blew up?

A. Better than Two Cables Length.

Q. If the *Marlborough*, inſtead of being towed to Windward, had been towed right to Leeward, Would ſhe not have paſſed between you and the Fireſhip?

A. She muſt have gone ahead of the Fireſhip.

Q. Do you remember, when the *Spaniſh* Admiral bore away?

A. Yes.

Q. Did not the *Spaniſh* Ships you was engaged with, bear away after him at the ſame time?

A. They bore away all the time.

Q. But did they not bear away more remarkably, when their Admiral bore away?

A. I don't remember when their Admiral bore away; but they kept edging away, during the whole time we engaged them.

Q. You engaged the Headmoſt of thoſe Ships?

A. Yes.

Q. What Diſtance might the Second be from the Firſt?

A. Cloſe together:— They were all pretty cloſe together, in a Line, but ſomewhat more Diſtance between the Second and Third, than between the reſt.

Q. What became of the Firſt Ship?

A. We kept engaging her the whole time: She kept away Large: We engaged the Second Ship too.

Q. Did you continue all the time engaging the Two Headmoſt; or did you engage any others?

A. I think, we only engaged the Two firſt, till after we wore.

Q. In what Poſition were thoſe Two Ships, with regard to you, when the Fireſhip blew up?

A. Both upon our Starboard-Quarter.

Q. Did you ſee a Boat go from any of our Ships to the Fireſhip?

A. No; I ſaw the *Real* ſend a Boat towards her.

Q. Which Ship was the neareſt to the Fireſhip, when ſhe blew up; you, or the *Dorſetſhire*; upon your Oath?

A. We were.

Priſoner aſked,

Q. Did you, or did you not, ſee me run aft to the Man at the Helm, when we were bearing down?

A. Yes.

Q. Tell the Court, what I ſaid to him then.

A. He ſtamp'd with his Foot, and ſaid, God Zounds, keep the Helm up, till we get the Admiral's Maſts in one.

Q. When we came into the Line, and I ſaw no Ship to engage, Do you remember the particular Words I ſaid at that time.

A. Yes.

Q. Tell the Court what they were.

A. You clapp'd your Hands upon your Breaſt, and ſaid, You was very unhappy, in being placed where you had no Ship to engage; and expreſſed a great deal of Uneaſineſs at it.

Priſoner ſaid,

He had a Queſtion to propoſe; which if he did not propoſe right, he begg'd the Court would let him know it.

The Court told him, to aſk what he pleaſed.

Q. Did I ſay to the Maſter, By God, I'll break the Line, and hail the *Royal Oak*, to come down along with us?

A. Yes; you did ſay ſo; I remember the Words very well: And you ſaid, It's better to be blamed for breaking the Line, than to lie thus, and have no Ship to engage.

Q. Did you look into my Cabin?

A. Yes.

Q. Did you ſee any Furniture there; or did you ſee where it was put?

A. I ſaw no Furniture in the Cabin; but I ſaw the Stern-gallery was full of Tables, Chairs, and other Things.

Q. What Officers were by, when I ſpoke to the Maſter?

A. Mr. *Le Craſs* was by; but, I can't ſay, whether any body elſe was there, or not.

Then the Queſtions delivered in by the Proſecutors for the Crown, were aſked by the Judge-Advocate, as follows:

Q. When the Admiral ſtood to the Northward, on the Starboard-tack, after Wearing in the Evening, What Station was the *Rupert* in? Was ſhe the Firſt, Second, or Third Ship aſtern or ahead of the Admiral?

A. The Second Ship aſtern of the Admiral.

Q. What Ship was between the Admiral and *Rupert*?

A. The *Dorſetſhire*.

Q. What Ship was next aſtern of the *Rupert* then?

A. I can't tell; but I believe, it was the *Eſſex*.

Q. Did the *Rupert* receive any Shot, and how many, in her Hull, or Maſts, during that Day's Action?

A. She received ſeveral Shot in her Hull, on both Sides.

Q. Did ſhe receive any in her Maſts?

A. I don't remember any in her Maſts.

Q. You ſay, She received ſeveral Shot in her Hull, How many did ſhe receive?

A. We received Three or Four in the Starboard-ſide, and Two or Three in the Larboard-ſide; which we plugged up next Day.

Court aſked,

Q. How did you get them out?

A. I believe, ſome are ſtill remaining in her: We did not take them out; but nailed Boards over them.

Q. Did any go through her Sides?

A. I don't remember, that any went through the Sides.

Q. What Countryman are you?

A. A *Scotchman.*

Q. What Religion are you of?

A. Of the Church of *England.*

Judge-Advocate asked,

Q. Did the Admiral, and his Diviſion, in ſtanding to the Northward, after he wore in the Evening, paſs to Windward, or to Leeward, of the *Marlborough?*

A. I believe the Admiral, and all his Diviſion, paſſed to Leeward of the *Marlborough.*

Q. Did the *Rupert* paſs to Leeward of the *Marlborough?*

A. Yes. *Then he withdrew.*

Priſoner. May I be allowed to aſk a Queſtion of this Witneſs; which, though it does not immediately relate to this Action, yet will tend to ſhew, that Two Ships may be engaged, and one of them will loſe many Men, and the other be little hurt.

The *Court* allowed, there had been Inſtances of it; but told the Priſoner, He might prove it, if he thought proper: And the Witneſs was called in again.

Q. Do you remember, when I engaged the Duke of *Vendome*, of Twenty-ſix Nine-pounders, and Twenty-four Swivels, how many Men I killed him?

A. I think, the Duke of *Vendome* had Twenty-nine killed, and Twenty-eight wounded.

Q. How many were killed, and how many wounded, on board the *Rupert?*

A. There was only one Man killed on board the *Rupert*, and one wounded.

Q. With what Guns did the *Rupert* engage her?

A. The *Rupert* engaged her with the Upper and Quarter Deck-Guns: Two or Three of the Lower-deck-Guns were got ready; but I don't know, whether they were fired, or not.

Q. Was I not obliged to beat all her Maſts down, before ſhe ſtruck?

A. Every one was down, before ſhe ſtruck: She had nothing left, but the Stump of her Mizen-maſt.

Then he withdrew.

Henry Mackleren, Quarter-maſter on board the *Rupert*, was called in, and ſworn.

His Depoſition read.

Henry Mackleren, *Quarter-maſter on board his Majeſty's Ship the* Rupert, *at the Time of the late Engagement in the* Mediterranean, *between his Majeſty's Fleet, and the Combined Fleet of* France *and* Spain, *on the* 11*th* February, 1743. *maketh Oath*;

THAT, when Admiral *Mathews* made the Signal for the Line of Battle ahead, in the Morning of the aforeſaid Day, the *Rupert* got into the Line, and continued in it; and did not, during any time while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorſetſhire* and *Eſſex* were ſtationed between the *Marlborough* and *Rupert*, and were to Windward of the *Rupert*; and began to fire quickly after the Admiral.

That the *Rupert* bore down at the ſame time the Admiral did, and brought to in the Line; and, juſt after ſhe brought to, the *Real*'s Second aſtern bore away before the Wind: Upon which, the *Rupert* ſtood after her: Whereupon ſhe run cloſe under the *Spaniſh* Admiral's Lee-Quarter; and then the *Rupert* brought to again; and lay, with Topſails aback, to wait for the Five *Spaniſh* Ships aſtern, that were coming up; which were then about Four or Five Miles diſtant, and did not get up with the *Rupert* till about Three o'Clock; and then ſhe began to fire at them; but not till ſome time after they had fired at her.

That, about Two o'Clock, Captain *Ambroſe* ordered the Maſter of the *Rupert* to hail the *Royal Oak*; and tell her, He intended to bear down to engage the Five ſternmoſt Ships; and deſired, ſhe would bear down with him: That he does not know what Anſwer was made from the *Royal Oak*; but the *Rupert* thereupon edged down a little, and brought to again.

That it was not poſſible for the *Rupert* to get near enough to the *Real*, and her Second, to do Execution, without being between Two Fires, and breaking the Line; becauſe ſhe muſt have gone between the *Dorſetſhire* and *Eſſex*, and the *Spaniſh* Admiral's Second, and been expoſed to their Fire.

That a few Guns were at firſt fired from the *Rupert*, at too great a Diſtance; but, when Captain *Ambroſe* obſerved, they did not reach the Enemy, he ordered Firing to ceaſe; and afterwards cauſed Two or Three Guns to be fired at a Diſtance of Time from each other: And, when he found the Shot would well reach the Enemy, he ordered Firing to be continued, though the Enemy had fired ſome time at the *Rupert*, and their Shot went far over her, before ſhe began to fire at all.

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering for their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their Firſt Courſe, they muſt have been cloſe along-ſide the *Rupert.*

That the *Rupert* engaged the Headmoſt and Second Ships of the Five *Spaniſh* Ships aſtern; and that the *Malborough*'s Maſts fell about Half an Hour paſt Three in the Afternoon, the Headmoſt of thoſe Ships being then come up within point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down upon the *Real.*

That, when the Fireſhip blew up, ſhe was not above Half a Mile diſtant from the *Rupert*; and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, the Admiral wore to the Northward; upon which the *Rupert* ceaſed Firing, hauled her Wind, and paſſed to Windward of the Admiral and *Dorſetſhire*, and wore round after the *Dorſetſhire*; and was then again engaged with the *Spaniſh* Ships, in paſſing by them.

That this Deponent did not ſee any Signal of Diſtreſs made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement; nor did he hear the *Rupert* hailed from the *Royal Oak*, during the Engagement.

That, to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement, acted agreeable to the Naval Inſtructions and Diſcipline, and behaved with Conduct and Courage; and ſeveral times expreſſed his Uneaſineſs, that the Enemy's Five Ships were ſo long coming up.

Henry Mackleren.

Sworn before me, this 20th
Day of *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Quarter-deck, at the Second Gun.

Q. What Countryman are you?

A. A *Scotchman.*

Court. Remember you are upon your Oath; and anſwer nothing, but the Truth.

Q. You ſay, You bore down with the Admiral; and, ſoon after, brought up in a Line with him?

A. Yes.

Q. What Diſtance was you then from the *Marlborough?*

A. About a Mile.

Q. Where were the *Dorſetſhire* and *Eſſex*, when you brought up?

A. They were upon our Larboard-Bow, to Windward of us.

Q. Were they hauled up, as you were?

A. Yes; but they were to Windward of us.

Q. How far were they to Windward of you?

A. The *Eſſex*, when we brought to, was near a Mile; and the *Dorſetſhire* a little to Leeward of her.

Q. How many Points was the *Eſſex* upon your Weather-Bow?

A. About a Point on our Weather-Bow, and ahead withal; about a Mile diſtant from us.

Q. Were there any Ships aſtern of the *Real* then?

A. There were Six Sail; but they were all to Leeward of her.

Q. Was not the *Hercules* cloſe aſtern of her?

A. No; ſhe ſtood away to the Northward, after the Five Ships; and, upon ſeeing us coming down, ſhe wore, and went to Leeward of her own Admiral.

Q. What Diſtance was you from the *Hercules*, after ſhe hauled up under her Admiral's Quarter?

A. About a Mile and an Half, or Two Miles.

Q. Where was the *Royal Oak* then?

A. Aſtern of us, upon our Weather-Quarter.

Q. How much upon your Weather-Quarter?

A. A very little.

Q. How long did you lie ſo, before you began to engage?

A. I believe, about a Quarter of an Hour, or a little better.

Q. Were any of the Enemy's Ships come up to you in a Quarter of an Hour?

A. No: Then we ſet our Foreſail, and bore down to the Five Sail, after hailing the *Rupert*.

Q. Recollect yourſelf: What did you engage?

A. The Ships coming up.

Q. What! in a Quarter of an Hour?

A. No.

Q. Did you not ſay, You began to engage in a Quarter of an Hour? Was it Engaging? Or what did you mean by it?

A. It was that time, before we edged down to them.

Q. And how long, after you edged down, was it, before you began to engage them?

A. About a Quarter of an Hour, before we fired any Gun; and their Shot, then, went over us.

Q. How long, after you firſt brought to, was it, before you began to engage, in the Whole?

A. About Half an Hour.

Q. Was you within point-blank Shot, when you began to engage?

A. Not when we fired the Firſt Gun—Their Shot went over us. Then we edged down, and, as we edged towards them, they edged from us.

Q. How long was it, before you fired at them, after you got near enough to fire upon them?

A. After we bore away, the Captain ordered a Gun to be fired, to try the Diſtance; which ſome of our People underſtood, that the Captain had ordered the Guns to be fired; and they fired ſeveral Guns: And then our Captain ordered, directly to ceaſe Firing.

Q. How long was it, from the Time of your firſt Bringing to, to the Time of your firing your firſt Gun, by way of Trial?

A. About Half an Hour.

Q. How long was it, after that, before you began to fire a Broadſide, and continued Engaging?

A. About a Quarter of an Hour.

Q. What

Q. What Diſtance was you from the Enemy, when you engaged them?

A. About Half a Mile, when we firſt began to engage.

Q. What Diſtance was you from them, when you was at the neareſt, before the Admiral wore?

A. About a Quarter of a Mile.

Q. How many of thoſe Ships, do you think, fired upon you?

A. The Two Headmoſt.

Q. Could not the Third have fired at you?

A. No; her Shot would not reach us. There was a greater Diſtance between the Second and Third, than there was between the Firſt and Second.

Q. Did you ſee any of thoſe Ships fire at the Fireſhip?

A. Yes; I did: But their Shot did not reach her.

Q. Was you nearer the Fireſhip, than thoſe Ships were?

A. We were nearer to the Enemy, than to the Fireſhip.

Q. That is not the Queſtion—Was you nearer the Fireſhip than they were?

A. Yes; we were nearer the Fireſhip, than the Enemy were.

Q. Did you obſerve the *Marlborough*, when the Fireſhip blew up?

A. Yes; we were engaged with the Five Ships, then.

Q. How did ſhe bear from you?

A. Almoſt right ahead; very little upon our Larboard-Bow.

Q. How did your Head lie?

A. South-South-Weſt.

Q. Did it lie the ſame Way as the *Marlborough*'s did?

A. Yes.

Q. Had you either of the *Marlborough*'s Sides open? Or was you right aſtern?

A. We had neither of her Sides open—We could not, as we were right aſtern.

Q. Was your Ship, or the *Dorſetſhire*, neareſt the Fireſhip, when ſhe blew up?

A. I can't ſay—Yes, I am ſure, we were neareſt; we muſt have been the neareſt: For we were not Half a Mile from the Fireſhip.

Q. Did you ſee any *Engliſh*, or *Spaniſh* Boat, go towards the Fireſhip?

A. No; I did not ſee either.

Q. Do you remember any thing of the *Royal Oak*'s hailing you?

A. No; I never heard any thing of her hailing us.

Q. Did you ever obſerve the *Royal Oak* to Leeward of you?

A. No.

Q. Did the *Royal Oak* engage any of the Five Ships, when you did?

A. Yes.

Q. Which began firſt; the *Royal Oak*, or you?

A. The *Royal Oak* began to engage, before we did.

Q. How might the Headmoſt of thoſe Ships bear upon the *Royal Oak*, when ſhe began to engage?

A. It muſt have been abaft her Beam.

Q. How long was it, after the *Royal Oak* began to engage, that you began to engage?

A. About a Quarter of an Hour.

Q. Did the *Royal Oak*, or the *Rupert*, engage thoſe Ships neareſt?

A. The *Rupert*.

Q. How far was the *Royal Oak* from the *Rupert*?

A. About a Cable's Length, or a Cable and an Half, upon our Weather-Quarter.

Q. How much upon the Quarter?

A. A very little upon our Weather-Quarter, and aſtern withal.

Q. Did any of thoſe *Spaniſh* Ships ever come abreaſt of you?

A. No; they came upon our Quarter.

Q. Did any of them ever come abreaſt of the *Royal Oak*?

A. I think, the Headmoſt of them was very nigh abreaſt of her.

Q. And you obſerved the *Rupert*, all the Time, nearer than the *Royal Oak*?

A. Yes; becauſe ſhe was upon our Quarter.

Q. How much was ſhe upon your Quarter?

A. Very little, upon our Quarter.

Q. Did ever any of the Enemy's Ships come abreaſt of you?

A. Yes.

Q. Which of them?

A. The Two headmoſt Ships.

Q. At what time was that?

A. About Half an Hour paſt Three.

Q. Did they ever go before your Beam?

A. No; neither of them.

Q. Did they keep upon your Beam, all the time you was engaging?

A. Yes; we kept them upon our Beam, all the time, till the Admiral wore.

Q. How near was the *Royal Oak* upon the *Rupert*'s Quarter?

A. About a Cable's Length, or a Cable and an Half; and aſtern withal.

Q. Upon the Weather-Quarter?

A. Yes.

Q. Did you hear any-body, while you was engaged, complain, That the *Royal Oak* did not do her Duty?

A. No.

Q. Which did the *Rupert*, or *Royal Oak*, leave off Engaging, firſt?

A. The *Royal Oak* did.

Q. What was the Reaſon of her Leaving off?

A. I can't tell, why ſhe left off.

Q. What Sail had you ſet, when you engaged the Enemy abreaſt, and kept edging down along with them?

A. Our Three Topſails.

Q. And

Q. And what Sail had the Enemy?

A. Their Topſails, and Foreſails; and, ſome of them, their Top-gallant-ſails.

Q. Did you obſerve them to edge down, more than their Admiral did?

A. Yes.

Q. How long did you keep Edging down, and engaging them, in that manner?

A. About Three-quarters of an Hour, or an Hour.

Q. Did the *Royal Oak* continue Engaging, all that time?

A. Yes.

Q. How did the *Marlborough* then bear from you, when you left off Engaging?

A. About a Point, upon our Weather-Bow.

Q. Don't you reckon, that you engaged the Headmoſt of thoſe Ships, as cloſe as the *Marlborough* engaged?

A. I can't tell that—I don't know how nigh the *Marlborough* was; but we engaged within a Quarter of a Mile.

Q. How long might you haul your Wind, to give the Admiral room to paſs by?

A. Not long—It was not a Quarter of an Hour, before we engaged again, after the Admiral.

Q. Did you obſerve, when the *Marlborough* loſt her Maſts?

A. No; we were then engaging the Five Ships.

Q. Did you obſerve the Fireſhip blow up?

A. Yes.

Q. What was you then doing?

A. We were juſt beginning to engage the Five Ships, when the Fireſhip blew up: For ſhe blew up, juſt after the *Marlborough*'s Maſts fell.

Q. Where was the *Marlborough* then?

A. The *Marlborough* went away, before the Fireſhip blew up.

Q. Had you not fired at the Enemy at all, before the Fireſhip blew up?

A. Yes.

Q. How long before?

A. Not long—I believe, about Three or Four Minutes.

Q. What was you doing, when the *Marlborough*'s Maſts went away?

A. Engaging thoſe Ships.

Then the Queſtion delivered in, by the Proſecutors for the Crown, were asked, as follows:

Q. When the Admiral ſtood to the Northward, on the Starboard-tack, after Wearing in the Evening, What Station was the *Rupert* in?

A. The Second Ship aſtern of the Admiral.

Q. What Ship was between her and the Admiral?

A The *Dorſetſhire.*

Q. What Ship was next aſtern of the *Rupert?*

A. I did not mind.

Q. Did the *Rupert* receive any, and how many Shot, in her Hull, or Maſts, in that whole Day's Action?

A. I can't tell—There were ſeveral Shot received in the Hull—One of them came in at the Larboard-ſide, and carried away Two Trucks of the Guns on the other Side.

Q. How do you know that?

A. I went down, and I ſaw the Two Trucks were gone.

Q. Did the Admiral, and his Diviſion, in ſtanding to the Northward, after he wore, in the Evening, paſs to Windward, or to Leeward, of the *Marlborough?*

A. The Admiral, *Dorſetſhire*, and We, went to Leeward of the *Marlborough*; but I can't tell what other Ships did ſo.

Priſoner asked,

Q. Do you remember my running after the Man at the Helm, when we were bearing down?

A. Yes.

Q. What did I ſay to him?

A. You ſwore at the Man at the Helm, to keep the Helm up, till we got into a Line with the Admiral.

Q. Do you remember, when the Admiral bore away, Did I, or did I not, make more Sail, in order to get the quicker into the Line?

A. Yes.

Q. Tell the Court what Sail we had then.

A. We had Foreſail, Three Topſails, and Top-gallant-ſails.

Q. What Sail did I make, more than I had before?

A. We ſet the Foreſail, and looſed the Top-gallant-ſails.

Q. Did you hear any Converſation paſs between me and any Officers, and which of them, upon the Quarter-deck?

A. I remember your talking to the Lieutenant, and Maſter: But I don't know what was ſaid.

Q. Was it One Lieutenant, or Two? Or how many?

A. To One of the Lieutenants.

Q. Did you hear me order the Maſter to hail the *Royal Oak?*

A. Yes.

Q. From whence did the Maſter hail her?

A. From the Weather-Main-ſhrouds.

Q. Did we, or did we not, run down, afterwards, into the Track of thoſe Five *Spaniſh* Ships, that were coming up?

A. Yes.

Q. When we brought up with our Head to the Southward, in that Track, How did the Five *Spaniſh* Ships then bear from us?

A. A little upon our Starboard-Quarter.

One of the Members asking, Did you ſay, Track, or Wake? The Priſoner ſaid, He did not know, whether he expreſſed himſelf right; but he underſtood Wake to be, right aſtern of a Ship, in following her: And, by Track, he

meant, being before a Ship, in the Way ſhe was to ſteer.

Q. If they had held the ſame Courſe they ſteered, when I went down; How near would they have fetched to us?

A. Cloſe along-ſide of us.

Q. Was it, or was it not, their Bearing away, that brought them upon our Beam? Or was it by their coming up to our Length?

A. Our Edging down towards them, and their Bearing away, brought them upon our Beam.

Q. Did you look into my Cabin, during the Engagement?

A. Yes.

Q. Were not all the Bulk-heads knocked down?

A. Yes.

Q. Was there any Furniture there?

A. No; your Furniture was all put into the Stern-gallery.

Q. Was the Helm put aſtarboard to yaw the Ship, and bring the Larboard-Broadſide to bear?

A. Yes.

Q. Did you fire the Gun you was quartered to, then?

A. No; I could not bring my Gun to bear, for the ſwifter Abaft.

Q. Were there any other Guns fired upon the Quarter-deck?

A. Yes, ſeveral.

Then he withdrew.

Nathanael Scarlett, Gunner of the *Rupert*, called in, and ſworn.

His Depoſition read.

Nathanael Scarlett, *late Gunner of his Majeſty's Ship the* Rupert, *at the time of the late Engagement in the* Mediterranean, *between his Majeſty's Fleet, and the Combined Fleet of* France *and* Spain, *on the* 11*th* February, 1743. *maketh Oath*;

THAT, when Admiral *Mathews* made the Signal for the Line of Battle ahead, in the Morning of the aforeſaid Day, the *Rupert* got into the Line, and continued in it; and did not, during any time while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorſetſhire* and *Eſſex* were ſtationed between the *Marlborough* and *Rupert*, and were to Windward of the *Rupert*, and began to fire quickly after the Admiral.

That the *Rupert* bore down at the ſame time the Admiral did; and brought to in the Line, to wait for the Five *Spaniſh* Ships aſtern, that were coming up; which were then about Four or Five Miles diſtant; and did not get up with the *Rupert*, till about Three o'Clock; and then ſhe began to fire at them, but not till ſome time after they had fired at her.

That it was not poſſible for the *Rupert* to get near enough to the *Real*, and her Second, to do Execution, without being between Two Fires, and breaking the Line; becauſe ſhe muſt have got between the *Dorſetſhire* and *Eſſex*, and the *Spaniſh* Admiral's Second, and been expoſed to their Fire.

That a few Guns were, at firſt, fired from the *Rupert*, without point-blank Shot; but when Captain *Ambroſe* obſerved, they did not reach the Enemy, he ordered Firing to ceaſe; and afterwards cauſed a Gun to be fired from each Deck on a Point-blank, which did not reach; then he ſtaid a ſmall time, and ordered another Gun to be fired on a Point-blank from the Lower-deck, which reached the Headmoſt of the Five Ships; then he ordered Firing to be continued, tho' the Enemy had fired ſome time at the *Rupert*, and their Shot went far over her, before ſhe began to fire at all.

That, at the Firſt Part of the Engagement, the *Rupert*'s Guns lay on the Beds; and afterwards, the Beds with a Port-wedge on them.

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering for their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their firſt Courſe, they muſt have been cloſe along-ſide of the *Rupert*.

That the *Rupert* engaged the ſternmoſt Ships of the Enemy, about the time the *Marlborough*'s Maſts fell; the Headmoſt of thoſe Ships being then come within about point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down to the *Real*.

That, when the Fireſhip blew up, ſhe was about Half a Mile diſtant from the *Rupert*, and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, we ceaſed Firing; and was ordered to make the Starboard-Guns faſt with the Tackles, and to tend the Larboard-Guns; which we did; and preſently after began to engage the *Real*, and the other Ships, as we paſſed them, being then led off by our Admiral.

That this Deponent did not ſee any Signal of Diſtreſs made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement: Nor did he hear the *Rupert* hailed, from the *Royal Oak*, during the Engagement.

That, to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement, acted agreeable to the Naval Inſtructions and Diſcipline; and behaved with Conduct and Courage; and ſeveral times expreſſed his Uneaſineſs, that the Enemy's Five Ships were ſo long coming up.

Nathanael Scarlett.

Sworn before me, this 20th Day of *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. You ſay, You got into a Line, ſoon after the Admiral engaged?

A. Yes; it was ſome time after.

Q. How long was it?

A. About a Quarter of an Hour.

Q. When you was in the Line, Did you brace to, or continue under Sail?

A. I think, We braced to.

Q. How long did you continue ſo?

A. About a Quarter of an Hour.

Q. When you filled again, What did you do?

A. We were going down before the Wind, and 'twas ſaid, to engage the *Hercules*, the Ship aſtern of the *Real*; but we ſoon brought to again.

Q. What did you do then?

A. The Ship was in ſeveral Poſitions, by yawing to and fro; but, what the Particulars were, I can't ſay, being below; but I believe it was, in order to back the Ship, and get nearer the Enemy.

Q. Where was you quartered?

A. Upon the Gun-deck.

Q. How long was it after you hauled up the Second time, before you engaged the Enemy abreaſt?

A. About an Hour and an Half; I am not poſitive, as to the Time; for we kept no Watch going.

Q. What was you doing all that Time?

A. Yawing the Ship, to get nearer the Enemy.

Q. When the Enemy was got the Length of you, How near was you to engage properly?

A. When they got abreaſt of us, they were about Three Cables Length from us; I believe that was the neareſt we were to them.

Q. Did you obſerve any Damage done to the Enemy, by the *Rupert*?

A. One of our Lower-deck-Guns, cut the Leech of one of their Main-top-gallant-ſails.

Q. How long did you engage, at that Diſtance?

A. Until the Admiral wore.

Q. What Number of Men had you killed, or wounded?

A. None killed, or wounded, before we wore; as I know of.

Q. How do you know, it was one of your Lower-deck Guns, that ſhot their Top-gallant-ſail?

A. I imagined ſo, becauſe they were fired at that time.

Q. How were your Guns then laid?

A. This Gun was laid upon the Bed.

Q. How did the Bed lie?

A. It lay properly, upon the Bolt in the Carriage.

Q. Which Side was that Shot fired from?

A. From the Starboard-ſide; it was one of the Lee-Guns.

Q. What Diſtance was you from them then?

A. About Half a Mile, I believe; there was a great Sea, and it was occaſioned by a Weather-roll.

Q. Did any Shot, ſtrike you between Wind and Water?

A. No.

Q. Did you ſee any of the Enemy's Shot fly over you?

A. Yes; a conſiderable Way over, before we fired: I obſerved one of them, before we began to fire, fall at a conſiderable Diſtance beyond us.

Q. Did you ſee any of thoſe Shot fall and riſe again?

A. No.

Q. At what time did you firſt fire your Larboard-Guns?

A. We fired them once about Three o'Clock.

Q. At what Ship did you fire then?

A. At the Headmoſt of the Five *Spaniſh* Ships.

Q. Was that before, or after, you tried the Diſtance by firing ſeveral ſingle Guns?

A. To the beſt of my Knowlege, it was after.

Q. Had you any time engaged with your Starboard-Guns, before you fired your Larboard-Guns?

A. We fired our Starboard-Guns once before; but the Shot did not reach: At firſt of all, a Gun was fired to try the Diſtance; upon which, moſt of the Starboard-Guns were immediately fired; and we fired the Starboard-Guns a Second time, by Order, before we yawed.

Q. Did you obſerve, at the Second Firing by Order, that your Shot then reached?

A. Yes.

Q. Did you continue to engage with the Starboard-Guns; or did you then yaw upon that, and fire your Larboard-Guns?

A. We then yawed, and fired the Larboard-Guns.

Q. Before you yawed, Where was the *Royal Oak*?

A. I can't tell; I don't remember that I ſaw her.

Q. When you did yaw, and fire your Larboard-Guns; Did you fire your whole Broadſide, or only Part of them?

A. We fired them all but one, which, for want of priming, did not go off.

Q. Did you, at that time, obſerve the *Royal Oak*?

A. No.

Q. Where was the *Royal Oak* ſtationed in the Line, in reſpect of you?

A. Aſtern of us.

Q. Do you know any thing of her engaging with you?

A. I ſaw her fire once; and then ſhe was aſtern of us.

Q. Are you a Seaman?

A. Yes.

Q. I aſk you as a Seaman, Whether, when you ſtarboarded your Helm to fire your Larboard-

board-Guns, it was not natural for you to look out, to ſee whether the Ship ſtationed aſtern of you, was not in the Way of your Fire, when your Ship's Broadſide came to where her Stern was?

A. I did not take any Notice of her then; I ſaw her but Twice; once ſhe was right aſtern, and the other time ſhe was upon our Weather-Quarter; but I did not ſee her, when we fired the Larboard-Guns.

Q. As you are Gunner of the Ship; acquaint the Court, what Powder and Shot you expended that Day?

A. Twenty-ſeven Barrels of Powder:—— About Eighteen Broadſides.

Q. What Shot did you expend?

A. More Shot; becauſe we very often fired Double-round.

Q. Do you think, that a Grape-ſhot would have flew on board the Enemy, when you was neareſt to them?

A. Yes; I believe it would,

Q. Did you expend any Grape-ſhot?

A. We did expend ſome; but I don't know what Quantity; and what we fired, was after we wore, and upon the Lower-Gun-deck.

Q. Do you think, a Grape-ſhot could reach the Enemy from you, before you wore?

A. Yes; I believe they would; but none, to my Knowlege, were fired from the Gun-deck, before Wearing.

Q. At the Time you ſaw the *Royal Oak* upon your Weather-Quarter, What o'Clock was it?

A. I believe, about Three o'Clock; I can't be certain:—It was when we were engaged.

Q. Whether will a Grape-ſhot, or a Muſquet-ball, fly fartheſt?

A. A Grape-ſhot, I believe, to do Execution.

Q. Did you ſee the Admiral and *Marlborough*, when you ſaw the *Royal Oak* upon your Weather-Quarter?

A. I did not obſerve them.

Q. Was you under Sail, or lying to, then?

A. I think, we were jogging on under our Topſails; but I am not certain.

Q. Was you ever upon the Quarter-deck, from the Beginning of the Action, or before?

A. Yes; I was, till we began to engage.

Q. Did you continue upon Deck, from the time of your firſt Bearing down, till you brought to?

A. No; I was not upon Deck, when ſhe brought to; but I came upon Deck juſt after.

Q. Did you obſerve, that you was then in the Line?

A. I thought we were.

Q. Did you obſerve, Whether the Admiral's Maſts were in one?

A. I did not obſerve ſo exactly.

Q. Did you obſerve, whether the *Marlborough*'s and Admiral's Maſts were in one?

A. I think, the *Marlborough*'s were a little to Leeward of the Admiral's.

Q. Was it from your being to Windward, or the *Marlborough*'s being to Leeward, made her appear ſo?

A. I believe, the *Marlborough*'s being to Leeward.

Q. Why do you think ſo?

A. Becauſe, I believe, we were in a Line with the Admiral; and the *Dorſetſhire* and *Eſſex* were conſiderably to Windward of us.

Q. Could you ſee the *Namur*'s Starboard-Broadſide open?

A. No: We ſeemed to be as right aſtern of her as could be.

Q. Was you as far to Leeward, as the Admiral?

A. Yes; in my Opinion we were.

Q. How long did you continue down in your Station, before the Admiral left off Firing?

A. I can't tell; I did not obſerve when the Admiral left off Firing.

Q. When you looked, and thought yourſelf in a Line with the Admiral, Did you ſee the *Norfolk*, or any of the Ships ahead of the Admiral?

A. No.

Q. Was you engaged, when the *Marlborough*'s Maſts went away?

A. Yes.

Q. Did you ſee her at that time?

A. I ſaw her a little after her Maſts went away.

Q. Where did you ſee her from?

A. From the Second Port of the Gun-deck, on the Starboard-ſide; and I leaned out of the Port to ſee her.

Q. Did you ſee the Fireſhip blow up?

A. I ſaw her in a Smother.

Q. Did you ſee the *Marlborough* then?

A. No.

Q. How long had you been engaged, when the Fireſhip blew up?

A. About an Hour; but I can't be certain of the Time; for I had no Watch.

Q. What time did ſhe blow up?

A. About Four o'Clock; but I can't be certain as to the Time.

Q. Did you obſerve the Enemy, when the Fireſhip blew up?

A. Yes; we were firing at them.

Q. How did the Enemy then bear from you?

A. The Headmoſt of them was then abaft our Beam.

Q. What Diſtance was you from the Fireſhip then?

A. About Half a Mile; but I can't be very particular.

Q. How long was it, from the time you ſaw the Fireſhip in a Smother, before you wore in the Evening?

A. About Half an Hour; but I can't be very particular.

Q. Did you obſerve, when you wore, that there were any Remains of the Fireſhip floating upon the Water?

A. No;

A. No; I was not upon Deck, when we wore; I was then buſy between Decks, ſecuring the Guns.

Q. Did you ever hear of any Diſpute about going to Leeward, or to Windward, of the Fireſhip, as ſhe was burning upon the Water?

A. I heard of it afterwards.

Q. How long was the *Royal Oak* engaged before you?

A. The *Royal Oak* began to engage about Half an Hour before we did.

Q. Did you, in all the time you was engaged, ever obſerve any other Ship engaged with thoſe *Spaniſh* Ships, beſides the *Royal Oak*.

A. No; I heard that the *Cambridge* came down, and fired Two or Three Broadſides, and hauled off again; but I know nothing of it myſelf.

Q. Did you never obſerve the *Royal Oak* to Leeward of you, all the time you engaged?

A. No; I never did: I ſaw her once right aſtern, and once upon our Weather-Quarter.

Q. Was ſhe ever at ſuch a Diſtance, upon your Weather-Quarter, as to be remarked?

A. No; not at all: We lay together all the Time that I ſaw her: I did not perceive any Difference in the Diſtance between us.

Q. Did you continue Engaging, till the Signal for Battle was hauled down, and the White Flag hoiſted on board the Admiral?

A. We continued Engaging, from the Time we began, till the Admiral wore: And the Captain ordered us to ſecure the Starboard-Guns, and get ready for the Larboard-Guns; but I did not ſee the Signal.

Q. How long was you within Point-blank?

A. We were all the time within Point-blank, except a little at firſt.

Q. How long was that?

A. I believe, we might be within Point-blank about an Hour and an Half; but I can't be exact.

Q. Have you no other Reaſon, but your View, to judge you was within Point-blank?

A. No; no other.—One Shot went thro' the Barricado of the Booms, and went over on the other Side, into the Water.

Q. Did you hear, that That Shot ſtruck the *Royal Oak*'s Stopper of her Anchor?

A. I heard, that a Shot did ſo; but I can't ſay what Shot did it.

Q. How far was your fartheſt, and neareſt, Diſtance of Engaging, before you wore?

A. About Four Cables Length at firſt, and Three Cables Length, for an Hour and an Half afterwards.

Q. During that Hour and an Half, Do you think, that you was neither nearer, nor farther, from the Enemy?

A. Much the ſame: At firſt, we were about Four Cables Length from the Enemy; and, at leaving off, about Three Cables.

Q. Had you any Men killed, or wounded, upon the Gun-deck?

A. There were Five or Six wounded.

Q. Before the Admiral wore, Were there any Men killed or wounded?

A. No; none that I know of; nor did I hear of any upon any other Deck, during that time.

Q. Did any Shot go through your Starboard-ſide, or ſtick in it?

A. No; I never heard of any: There were Three or Four Shot came into the Larboard-ſide.

Q. How many of the Enemy's Ships fired at you, while you was engaging?

A. I believe, the Firſt and Second of the Five Ships. No other fired at us before Wearing.

Q. Did the *Rupert* heel any thing, while ſhe was engaged?

A. Yes: The People being all on one Side, made her heel a little.

Q. Do you attribute it intirely to the People being on one Side, and not to the Weather, or Sea?

A. No; there was but little Wind: That could not affect her Heeling.

Q. Were your Larboard-Guns run out?

A. Yes.

Q. Do you think, as Gunner of a Ship, that your Guns were lowered only juſt in proportion to the Ship's Heeling, ſo as to carry the Shot point-blank?

A. They were lowered no more than was neceſſary for that Purpoſe.

Q. I can't conceive you could be within Point-blank, ſince their Shot that hit your Sides, did not go through you.

A. I don't know, that any Shot hit our Sides, before we wore.—The Enemy fired their Weather-Guns, and their Shot went through our Rigging.

Q. Was you nearer the Enemy after Wearing, than before?

A. Yes; ſomething nearer.

Q. Did the Shot you received after Wearing, go through your Sides?

A. No.

Q. Then, if they did not go through your Sides, after Wearing, when you was nearer than you was before Wearing, How could you be within Point-blank, before you wore?

A. There were about Five or Six Shot ſtruck our Sides, after Wearing; one of them went through the Larboard-ſide, and ſtuck in the But-end of the Beam on the other Side, about Five or Six Inches in; and Three of them went into the Larboard-ſide, through the Planks, and ſtuck in the Beams.

Then ſuch of the Queſtions delivered in by the Proſecutors for the Crown, as the Witneſs had not already anſwered in his Evidence, were asked; *viz.*

Q. When the Admiral ſtood to the Northward, on the Starboard-tack, after Wearing,

in the Evening, What Station was the *Rupert* in?

A. The Second Ship aſtern of the Admiral; the *Dorſetſhire* was the next ahead of her, between the Admiral and *Rupert*.

Q. What Ship was next aſtern of the *Rupert*?

A. The *Eſſex*.

Q. Did the Admiral and his Diviſion, in ſtanding to the Northward, after Wearing, paſs to Windward, or to Leeward, of the *Marlborough*?

A. I don't know where the *Marlborough* was then.

Priſoner aſked,

Q. Do you, or do you not believe, That my Firing at thoſe Ships, as they came up, forced them away to Leeward of their own Admiral?

A. Yes; I believe it did.

Q. How many of the lower Tier of Guns, that you fired from the Larboard-ſide, when we yawed the Ship, did you point yourſelf?

A. Only One.

Q. Did you point that Gun fair home to the Mark, or was it wide of it?

A. I pointed it at the headmoſt Ship; and we were then, I think, within Point-blank.

Q. Did you hear any Converſation between me and the Officers upon the Quarter-deck, after getting into the Line?

A. Yes: You expreſſed great Uneaſineſs; and ſaid, Zounds, I will bear down to thoſe Ships: I don't know, whether you meant the Five Ships coming up, or the *Real*, and her Second; but I believe, you meant the Five Ships.

Q. Who were preſent then?

A. There were yourſelf, the Maſter, and Firſt Lieutenant: And they anſwered, You are now in a Line; the Signal for the Line is ſtill flying; and you know beſt, whether you can anſwer it: This was when I came up, juſt after the Ship was brought to.

Q. Did you hear any Converſation afterwards?

A. No.—I went down.—You ſeemed to expreſs great Uneaſineſs, becauſe you was ſtationed where there was no Ship to oppoſe you.

Q. Did you, or did you not hear, from any body, of any Converſation that paſſed between the Maſter and me, about paſſing the Wreck of the Fireſhip?

A. I was not upon Deck then.

Q. That is not the Queſtion: Did you hear any Converſation about it?

A. I did not hear what paſſed between you; but I heard People ſay, That you had obliged them to go to Windward of it.

Court asked,

Q. As you are a Seaman, pray clear up to the Court, How you could yaw your Ship, and bring your Larboard-Broadſide to bear upon the Enemy, and fire clear of the *Royal Oak*.—

Suppoſe a Ship going away South, with the Wind a Point abaft her Larboard-Beam; another Ship right aſtern of her, within Two Cables Length: The firſt Ship is to have her Yards ſquared, and to yaw backwards and forwards, ſo as to back her Topſails both Ways: How can that Ship bring her Larboard-Broadſide to bear upon the Enemy, who bore upon her Starboard-Quarter before ſhe yawed; and fire clear of the Ship which lay aſtern of her? Or, How could ſhe afterwards bring her Starboard-Broadſide to bear upon the Enemy, without the Ship aſtern running on board of her?

A. As the Wind was then well aft, Three or Four Points abaft the Beam, at the time the *Rupert* yawed; therefore this is not ſtated as the Caſe was.—I have not ſaid, That her Topſails were back'd both Ways.

Q. Did you not ſay, That you brought your Larboard-Broadſide to bear upon the Enemy?

A. Yes; but I did not ſay, I ſaw the *Royal Oak* aſtern of us.

Q. But, as you pointed your Guns, How could you avoid ſeeing her? And how could you point your Guns clear of her?

A. I don't remember, that I did ſee her; but, in caſe ſhe was Two Cables Length aſtern, as the Wind was well aft, we might do it.

Q. Was the *Rupert* going away South?

A. I can't ſay that.

Q. Was the Wind a Point abaft the Beam?

A. It was Three or Four Points abaft the Beam.

Q. You ſay, When Captain *Ambroſe* went down to thoſe Ships, he ſpoke to ſome Officers; who anſwered, If you go out of the Line, you'll break your Inſtructions?

A. No; not ſo: I think the Words were, You are now in the Line; the Signal for the Line is ſtill flying; and you know beſt, whether you can anſwer it.

Q. Who ſaid this?

A. Either the Firſt Lieutenant, or Maſter; I can't ſay which: I am ſure one of them did; but I can't ſay both did.

Q. Did you not ſee the Maſter point to the Book of Inſtructions; and hear him ſay any thing to Captain *Ambroſe*?

A. No.

Priſoner asked,

Q. When you ſaw the *Royal Oak* upon our Quarter, Was it immediately at the time of Yawing; or was it at any little time before?

A. I really can't tell.

Q. Did you never hear, That the *Royal Oak* got her Fore-tack on board, and hauled her Mizen out, and went to Windward?

A. I heard it ſaid; but I don't know it.

Q. Did you not hear it that Day, at the time of the Engagement?

A. Yes; I heard ſo that ſame Day, ſoon after the Action was over.

Then he withdrew.

The Court adjourned till Monday *Morning next, at Eight o' Clock.*

The Seventh Day upon Captain JOHN AMBROSE's *TRYAL,*

On Board His MAJESTY'S *Ship the* London, *at* Chatham,

MONDAY, the 28th of *October*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, as were on *Friday* laſt.

The Priſoner was brought in by the Marſhal; and the Witneſſes were ordered to be called in.

Robert Blatchford, who acted as Quarter-maſter, on board the *Rupert*, was called in, and ſworn.

His Depoſition was read.

Robert Blatchford, *belonging to his Majeſty's Ship the* Rupert, *at the Time of the late Engagement in the* Mediterranean, *between his Majeſty's Fleet, and the Combined Fleet of* France *and* Spain, *on the 11th of* February, 1743. *maketh Oath*;

THAT, when Admiral *Mathews* made the Signal for the Line of Battle ahead, in the Morning of the aforeſaid Day, the *Rupert* got into the Line, and continued in it; and did not, during any time while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorſetſhire* and *Eſſex* were ſtationed between the *Marlborough* and *Rupert*, and were to Windward of the *Rupert*, and began to fire quickly after the Admiral.

That the *Rupert* bore down at the ſame time the Admiral did, and brought to in the Line; and, juſt after ſhe brought to, the *Real*'s Second aſtern bore away before the Wind, upon which the *Rupert* ſtood after her; whereupon ſhe ran cloſe under the *Spaniſh* Admiral's Lee-Quarter; and then the *Rupert* brought to again, and lay with Topſails aback, to wait for the Five *Spaniſh* Ships aſtern, that were coming up, which were then about Four or Five Miles diſtant, and did not get up with the *Rupert* till about Three o'Clock; and then ſhe began to fire at them, but not till ſome time after they had fired at her.

That it was not poſſible for the *Rupert* to get near enough to the *Real*, and her Second, to do Execution, without being between Two Fires, and breaking the Line, becauſe ſhe muſt have gone between the *Dorſetſhire* and *Eſſex*, and the *Spaniſh* Admiral's Second, and been expoſed to their Fire.

That a few Guns were at firſt fired from the *Rupert*, at too great a Diſtance; but, when Captain *Ambroſe* obſerved they did not reach the Enemy, he ordered Firing to ceaſe; and afterwards cauſed Two or Three Guns to be fired at a Diſtance of Time from each other; and, when he found the Shot would well reach the Enemy, he ordered Firing to be continued; though the Enemy had fired ſome time at the *Rupert*, and their Shot went far over her, before ſhe began to fire at all.

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering for their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their Firſt Courſe, they muſt have been cloſe along-ſide the *Rupert*.

That the *Rupert* engaged the Headmoſt and Second of the Five *Spaniſh* Ships aſtern; and that the *Marlborough*'s Maſts fell about Half an Hour paſt Three o'Clock in the Afternoon, the Headmoſt of theſe Ships being then come up within about point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down to the *Real*.

That, when the Fireſhip blew up, ſhe was not above Half a Mile diſtant from the *Rupert*, and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, the Admiral wore to the Northward; upon which the *Rupert* ceaſed Firing, hauled her Wind, and paſſed to Windward of the Admiral and *Dorſetſhire*, and were round after the *Dorſetſhire*; and was then again engaged with the *Spaniſh* Ships in paſſing by them.

That this Deponent did not ſee any Signal of Diſtreſs made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement; nor did he hear the *Rupert* hailed from the *Royal Oak* during the Engagement.

That, to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement, acted agreeable to the Naval Inſtructions and Diſcipline, and behaved with Conduct and Courage; and ſeveral times expreſſed his Uneaſineſs, that the Enemy's Five Ships were ſo long coming up.

Sworn before me, this 20th *Septem.* 1745.
Cha. Fearne, Ju. Ad.

his
Rob. R Blatchford.
Mark.

And he declared the ſame to be true.

Priſoner.

Priſoner. I beg the Favour of the Court to be ſo good, as not to aſk the Queſtions ſo faſt one after another, before the Judge-Advocate can take them down; for I have obſerved, there have been ſeveral times Queſtions omitted, that he could not take down.

Preſident. The Court are Judges of That, and will give the Judge-Advocate all the Opportunity they can, to take them down.

Q. What was You on board the *Rupert?*

A. I acted as Quarter-maſter.

Q. Where was you quartered?

A. At the Firſt Gun, upon the Quarter-deck.

Q. You ſay, The Admiral bore away, and hauled up to engage the Enemy; and that the *Rupert* was in a Line with the Admiral and *Marlborough?*

A. She was in a Line with the Admiral: Some time after the Admiral began to engage, ſhe was in a Line with the Admiral and *Marlborough* both.

Q. You ſay further, Upon your Hauling up in the Line, the *Hercules* bore away, and hauled up under the *Real*'s Quarter?

A. I apprehend the *Hercules* had a mind to join the Five Sail coming up; and then we went to cut her off; upon which, ſhe wore again towards her own Admiral; and, upon her Hauling up, we hauled up again.

Q. Did you fire at her?

A. No; we were at too great a Diſtance.

Q. Could you not have cloſed with the *Marlborough?*

A. Yes; but the *Dorſetſhire* and *Eſſex* were then engaging the Ship aſtern of the *Real*; and we could not go between them, without receiving both their Fires.

Q. Don't you think, thoſe Ships would have left off Firing, if they had ſeen you go to cloſe the Line?

A. I don't know, whether they would or not.

Q. What did you do, after the *Hercules* lay to under the *Real*'s Quarter?

A. We then lay with our Topſails full for a little time; and the Captain was very uneaſy, that he had no Ship to engage; and deſired the Maſter to get the Trumpet, and hail the *Royal Oak*; which he did; and ſaid, He had a mind to go down, and engage thoſe Five Ships coming up; and deſired he would go down with him: I heard an Anſwer from the *Royal Oak*; but I don't know what it was.

Q. Where was the *Royal Oak* then?

A. Aſtern, and a little upon our Larboard-Quarter withal.

Q. What did you do after that?

A. We bore down in the Track of the Five Sail.

Q. Did you lay with your Head towards them?

A. No; athwart them, in the Track they were coming up in.

Q. Did you come Home from the *Rupert*, on purpoſe to be an Evidence in this Caſe?

A. Yes.

Q. How long have you been here in *England?*

A. Six Weeks.

Q. When did you ſwear to your Depoſition?

A. I can't tell the Day of the Month.

Judge-Advocate. He ſwore to it the Twentieth of *September* laſt.

Q. As it is ſo material a Piece of Evidence, How came you not to mention the Hailing of the *Royal Oak*, in your Depoſition?

A. It was ſo; though it is not in my Depoſition.

Judge-Advocate. His Depoſition was drawn up, according to the Anſwers he gave to the Queſtions I aſked; but I might have omitted to aſk him that Queſtion, as well as many others.

Court. If he has omitted any thing in his Depoſition, he may declare it here.

Q. What was the Diſtance of Time between your firſt Bringing up in the Line, and Engaging?

A. I believe, about an Hour and an Half.

Q. How came you to lie ſo long, without engaging the *Hercules?*

A. She was too far ahead, and upon our Starboard-Bow withal.

Q. What Sail was you under, when you hailed the *Royal Oak?*

A. Topſails.

Q. Was you lying to?

A. No; our Topſails were full, and we were ſtanding the ſame way the Admiral did.

Q. What o'Clock was that?

A. Juſt after we got into the Line; it muſt be about Two o'Clock; it was juſt before we bore down.

Q. What was ſaid to the *Royal Oak?*

A. The Maſter told them, He had a mind to go down, and engage the Five Sail; and deſired he would bear down, and aſſiſt him; and there was an Anſwer made.

Q. How do you know, there was an Anſwer from the *Royal Oak?*

A. I apprehended there was; there was a Noiſe, as if there was.

Q. There might be a Noiſe without an Anſwer: What was the Anſwer?

A. They might ſay Aye, aye; but I'm not certain.

Q. What Part of the Ship did it come from?

A. I can't ſay, what Part of the Ship.

Q. Did you ever engage within Point-blank?

A. Yes; the Headmoſt of the Five Ships.

Q. How long did you engage thoſe Ships within Point-blank?

A. About an Hour and an Half.

Q. At what Diſtance did you engage thoſe Ships?

A. About Four Cables Length at firſt, but afterwards about Three Cables Length; which was the neareſt Diſtance we engaged them.

Q. I ſup-

Q. I ſuppoſe, you had a good many Men killed, and your Rigging much damaged:— What Number of Men had you killed?

A. I don't know, that we had any Men killed.

Q. How many had you wounded?

A. There were ſeveral wounded; I don't know how many; and ſome died of their Wounds.

Q. Was it before you wore, or after?

A. I can't ſay, when they were wounded; for I did not know it till next Day.

Q. You ſay, The neareſt Diſtance you engaged was Three Cables Length; How did the headmoſt *Spaniſh* Ship then bear from you?

A. Broad upon our Quarter.

Q. How long was it after Admiral *Mathews* began to engage, before You began to engage?

A. About an Hour and an Half.

Q. Did you lie in a Line with Mr. *Mathews*, till you did engage?

A. No; we were to Leeward of the Line.

Q. How do you know you was to Leeward of the Line?

A. Becauſe I ſaw the Admiral upon our Larboard-Bow.

Q. Might not that happen, when your Ship might edge a Point or Two away, more than the Admiral did?

A. Yes; that may be:— When we were in the Track of the Five *Spaniſh* Ships coming up, the Admiral was a Point or Two upon our Larboard-Bow.

Q. Explain yourſelf, as to your being in a Line with the Admiral?

A. We were in a Line at firſt, becauſe the Admiral was right ahead, and a little open upon our Larboard-Bow.

Q. Have you no other Reaſon, but the Admiral's being upon your Larboard-Bow, that the *Rupert* was in Line with the Admiral: What Rule have you for a Ship's being in a Line?

A. When a Ship is in the Wake of another, and has her Three Maſts in One.

Q. Had you the *Namur*'s Three Maſts in One?

A. Yes.

Q. When was that?

A. About Half an Hour after One, or Two o'Clock.

Q. Where was the *Marlborough*, when you obſerved the Admiral's Maſts in one?

A. The *Marlborough* was a little to Leeward of the Admiral.

Q. Was the Admiral then hauled off?

A. He was not.

Q. When you engaged the Headmoſt of the Five Sail, where was the Admiral then?

A. I can't ſay juſtly where he was, when we began to engage; I did not mind how the Admiral was, after we engaged.

Q. Did you obſerve the *Marlborough* then?

A. No; I can't ſay I did: We began to engage about the time ſhe loſt her Maſts.

Q. Was you the firſt Ship that engaged thoſe Five *Spaniſh* Ships?

A. No; the *Royal Oak* engaged them firſt, becauſe ſhe was aſtern of us.

Q. Did you ſee her to Leeward?

A. I never ſaw her to Leeward.

Q. How far was ſhe aſtern?

A. About a Cable's Length aſtern, and upon our Larboard-Quarter withal, at the time I ſaw her.

Q. When was that?

A. When we hailed her, about Two o'Clock: I did not obſerve the *Royal Oak* at any time, except when we hailed her; after the Maſter hailed her, I never obſerved her.

Q. How do you know then ſhe was never to Leeward?

A. I ſaid, I never Saw her to Leeward; that was what I ſaid.

Q. You ſay, You was within Point-blank, when you engaged thoſe Ships?

A. Yes.

Q. What do you mean by Point-blank?

A. When the Gun lies upon a Level, and hits the Mark.

Q. Did you obſerve the Shot to go to one of the *Spaniſh* Ships, when your Guns were on a Level?

A. Yes; I obſerved one, and ſaw it go beyond the *Spaniſh* Ship.

Q. How do you know it was not the *Royal Oak*'s Shot?

A. I am ſure it was not; I ſaw it was our Shot, and that it went beyond her.

Q. How many Shot ſtruck your Hull?

A. I heard that ſeveral did; but I can't ſay any thing of it, to my own Knowlege.

Q. Did you hear any Converſation between the Captain and the Officers upon the Quarter-deck?

A. I heard the Captain, when we firſt brought to, ſay to the Maſter and Lieutenant, that he would go down, and attack thoſe Five Ships; and was very uneaſy, that they were ſo long coming up.

Q. Did you hear any Anſwer?

A. I can't ſay I heard any Anſwer; but the *Royal Oak* was ſoon ofter hailed.

Q. Did you hear Captain *Ambroſe* ſay any thing to the Man at the Helm?

A. He ſaid, Zounds, keep the Helm aweather; and was angry he did not keep the Ship down far enough; and bid him continue, till he came into a Line with the Admiral.

Q. Are you ſure it was not, Keep the Helm alee?

A. I am ſure it was not.

Q. At what time did Captain *Ambroſe* ſay ſo to the Man at the Helm?

A. A little before Two o'Clock.

Q. Did you not then bring to in a Line?

A. I believe we got into the Line about Half an Hour after One; but I am not certain; for the Bell did not ſtrike all the Day.

Q. Was you not then in the Line?

A. Yes; we were in the Line, and rather to Leeward.

Q. Why do you think it was not, Keep the Helm alee?

A. It was at the time we were bearing down, before we came into the Line.

Q. Was the Admiral hauled up, or was he bearing down himſelf then?

A. I believe, juſt about the time that Captain *Ambroſe* ſaid that to the Man at the Helm, the Admiral began to engage.

Q. How long had you been engaged, before the *Royal Oak* hauled her Fore-tack on board, and run to Windward of you?

A. As I ſaid before, I know nothing of the *Royal Oak*, while we were engaged.

Q. Did you engage with your Larboard-Guns?

A. Yes; a Broadſide, I believe, we fired all.

Q. Who did you fire at?

A. At the Headmoſt, or Second, of the Five Sail coming up.

Q. Did you ſee the *Royal Oak* then?

A. No; as I ſaid before, I made no Obſervation of her.

Q. Did you not hear any Orders ſent from the Quarter-deck, when you fired your Larboard-Guns, to forbear firing the After-Guns, and to fire only the Foremoſt-Guns?

A. I did not hear any ſuch Orders.

Q. Did you fire one of thoſe Guns?

A. Yes; I fired one from the Quarter-deck.

Q. What did you fire it at?

A. At the Headmoſt of the Five Ships.

Q. Before you put your Helm aſtarboard, in order to bring your Head to the Eaſtward, to bring your Larboard-Guns to bear upon the Enemy, How did the *Spaniſh* Ships then bear from you?

A. Aſtern; and a little upon our Starboard-Quarter.

Q. Had you fired your Starboard-Guns then?

A. Yes; when we bore down, we fired our Starboard-Guns; then we brought our Head to the Eaſtward, and fired our Larboard-Guns.

Q. When you lay with the Admiral, and had the Admiral's Maſts in one, How was the Wind then?

A. I believe, the Wind was then about Eaſt.

Q. Was it before, or abaft your Beam?

A. I think, a little before the Beam; but I can't be certain, how the Wind was at that time.

Q. When you brought to, to engage thoſe Ships, How was the Wind?

A. I believe it came Northwardly before that.

Q. How was the Wind, when you bore down to engage thoſe Ships?

A. As we bore down to engage thoſe Ships, the Wind was upon our Starboard-Quarter.

Q. Did you fire upon the Enemy, while the Wind was upon your Starboard-Quarter?

A. I can't juſtly ſay.

Q. Do you remember, that, while you was bearing down, the Wind was ever upon your Starboard-Quarter?

A. Yes; it was.

Q. Was the Wind upon the Starboard-Quarter, before the Admiral brought up to engage?

A. No; it was after the Admiral engaged.

Q. How long after?

A. It was about an Hour, after the Admiral began to engage.

Q. Did it continue ſo?

A. It did, till we got into the Track that the Five Sail were coming up in.

Q. What did you do then?

A. We brought to, backed our Topſails, hauled up the Foreſail, and yawed the Ship.

Q. How long did you lie to?

A. Till Three o'Clock.

Q. By that means you muſt be lying to, when you hailed the *Royal Oak?*

A. No; we were yawing the Ship about Half an Hour, and then engaged; but we hailed the *Royal Oak* before.

Q. At what time did you hail the *Royal Oak?*

A. About Two o'Clock: There was about an Hour's Diſtance between the Time of hailing the *Royal Oak*, and the Time I am ſpeaking of now, of yawing the Ship.

Q. Do you remember to have heard of a Shot, that ſtruck your Booms?

A. Yes; I heard talk of it; but I don't know it.

Then ſuch of the Queſtions delivered in by the Proſecutor for the Crown, as are not already anſwered in the preceding Part of the Evidence, were asked; *viz.*

Q. When the Admiral ſtood to the Northward, on the Starboard-tack, after Wearing, in the Evening, In what Station was the *Rupert?*

A. The Second Ship aſtern of the Admiral; the *Dorſetſhire* between her, and the Admiral.

Q. What Ship was aſtern of you?

A. I don't know.

Q. Did the Admiral and his Diviſion, in ſtanding to the Northward, after he wore, in the Evening, paſs to Windward, or to Leeward, of the *Marlborough?*

A. The Admiral, *Dorſetſhire*, and *Rupert*, paſſed to Leeward of the *Marlborough*; I can't ſay what other Ships did.

Priſoner aſked,

Q. You have told the Court, That I bore down into the Track of thoſe Ships that were coming up?

A. Yes.

Q. If I had lain in that Track without Firing at them, How near do you think they would have come to me?

A. I

A. I believe they would have come to Windward, or close along-side of the *Rupert*, if they had not altered their Course.

Q. Did I endeavour to go nearer and nearer to them, or farther and farther from them?

A. Nearer and nearer always.

Q. Did you look into my Cabin?

A. Yes; and I saw the Bulk-heads were down.

Q. Did you know, where the Furniture of the Cabin was put?

A. I don't know, where it was put; I saw nothing in the Cabin.

Q. Did you ever hear among your Shipmates, Whether I was to blame, or could do more, or did not do right, or did not engage the Enemy as I ought?

A. No; I never heard of any Fault being found by any of the Ship's Crew.

Q. Did you go out of *England* in the Ship with me?

A. Yes.

Q. How long was *Samuel Anthony* Cook of the Ship?

A. I can't say, how long.

Q. Was he Cook before the Ship went out of *England?*

A. I believe he was; but I can't say indeed.

Q. Has he, or has he not, been always quartered at the Helm, whenever we were giving Chace, or had any Prospect of Engaging?

A. Yes, he was always quartered there, ever since I knew him.

Then some Questions, being delivered in to Court by the Prosecutor for the Crown, were asked; *viz.*

Q. Did you engage any other Ship, but the Headmost of the Five?

A. The First and Second upon the Larboard-tack, before we wore; but, upon the other Tack, we engaged all.

Q. How many did you engage, before you wore?

A. The First and Second, I believe.

Q. How long did you lie inactive, before you began to engage?

A. I believe, about a Quarter of an Hour.

Q. How long did you lie without Firing?

A. I believe it was about an Hour and an Half, after we came into the Line, before we began to engage.

Prosecutor for the Crown.—That is not my Question.

Court. What is your Question?

Prosecutor. After he began to engage, How long did he lie inactive?

Q. Did you lie inactive, after you began to engage, for any time; and how long did you lie inactive, before the Admiral wore?

A. We did not lie inactive at all, after we first began to engage.

Q. Did you fire all the time?

A. Yes.

Q. Which Side did you first fire your Guns from?

A. The Starboard-side.

Q. How long was it after you fired your Starboard Guns, before you fired your Larboard-Guns?

A. As soon as we could bring our Guns to bear on the other Side: It was a small time; I can't say how long.

Then he withdrew.

John Morel, Captain's Steward, on board the *Rupert*, was called in, and sworn.

His Deposition read.

John Morel, *belonging to his Majesty's Ship the* Rupert, *at the Time of the late Engagement, in the* Mediterranean, *between his Majesty's Fleet, and the Combined Fleet of* France *and* Spain, *on the* 11*th of* February, 1743. *maketh Oath*;

THAT when Admiral *Mathews* made the Signal for the Line of Battle ahead, in the Morning of the aforesaid Day, the *Rupert* got into the Line, and continued in it; and did not, during any time while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorsetshire* and *Essex* were stationed between the *Marlborough* and *Rupert*, and were to Windward of the *Rupert*, and began to fire quickly after the Admiral.

That the *Rupert* bore down at the same time the Admiral did, and brought to in the Line; and, just after she brought to, the *Real*'s Second astern bore away before the Wind: Upon which the *Rupert* stood after her: Whereupon she run close under the *Spanish* Admiral's Lee-Quarter; and then the *Rupert* brought to again, and lay with Topsails aback, to wait for the Five *Spanish* Ships astern, that were coming up; which were then about Four or Five Miles distant, and did not get up with the *Rupert*, till about Three o'Clock: And then she began to fire at them; but not till some time after they had fired at her.

That it was not possible for the *Rupert* to get near enough to the *Real*, and her Second, to do Execution, without being between Two Fires, and breaking the Line; because she must have gone between the *Dorsetshire* and *Essex*, and the *Spanish* Admiral's Second, and been exposed to their Fire.

That a few Guns were at first fired from the *Rupert*, at too great a Distance; but, when Captain *Ambrose* observed they did not reach the Enemy, he ordered Firing to cease; and afterwards caused Two or Three Guns to be fired at a Distance of Time from each other; and, when he found the Shot would well reach the Enemy, he ordered Firing to be continued; though the Enemy had fired some time at the *Rupert*, and their Shot went far over her, before she began to fire at all.

That,

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering for their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their firſt Courſe, they muſt have been cloſe along-ſide the *Rupert*.

That the *Rupert* engaged the ſternmoſt Ships of the Enemy, about the time the *Marlborough*'s Maſts fell; the Headmoſt of thoſe Ships being then come up within about point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down to the *Real*.

That, when the Fireſhip blew up, ſhe was not above Half a Mile diſtant from the *Rupert*, and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, the Admiral wore to the Northward: Upon which the *Rupert* ceaſed Firing, hauled her Wind, and paſſed to Windward of the Admiral and *Dorſetſhire*, and wore round after the *Dorſetſhire*; and was then again engaged with the *Spaniſh* Ships, in paſſing by them.

That this Deponent did not ſee any Signal of Diſtreſs, made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement; nor did he hear the *Rupert* hailed from the *Royal Oak*, during the Engagement.

That, to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement, acted agreeable to the Naval Inſtructions and Diſcipline; and behaved with Conduct and Courage; and ſeveral times expreſſed his Uneaſineſs, that the Enemy's Five Ships were ſo long coming up.

John Morel.

Sworn before me, this 18th
Sept. 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?
A. Upon the Quarter-deck, at the Small-Arms.
Q. Are you a Seaman?
A. No.
Q. Then how can you judge of your Captain's Behaviour?—You ſay, Your Captain was ſoon in a Line, after the Admiral began to engage?
A. Yes.
Q. Did you then begin to engage yourſelves?
A. No.
Q. What was the Reaſon you did not engage?
A. Becauſe we were then at too great a Diſtance.
Q. You ſay, You could not go to the Aſſiſtance of the *Marlborough*, becauſe you muſt have had the Fire of the Two Ships to Windward of you?
A. Yes.
Q. Don't you think, if you had gone to the Aſſiſtance of the *Marlborough*, they would have left off Firing?
A. I can't ſay.
Q. Are you a Seaman?
A. No.
Q. Did you give that Depoſition in, yourſelf?
A. Yes.
Q. How do you know, when Ships are in a Line?
A. Becauſe I can ſee when Ships are right ahead of one another; I looked out, and ſaw them.
Q. As you are Captain's Steward, Where was the Door of the Captain's Stern-Gallery?
A. About the Middle.
Q. How did the Door open?
A. Into the Cabin.
Q. Was there no Space left between the Door, and the After-Part of the Gallery, for a Perſon to go out at, to look over the Rails?
A. No; the Tables and Chairs, and other Things, were all ſtowed away, and laſhed, and the Stern-Gallery filled; and, after I had done ſo, I was forced to go over the Poop, in order to get into the Cabin.
Q. Were your Quarter-Galleries clear?
A. Yes.
Q. What time did you get into a Line with the Admiral and *Marlborough*?
A. About Twelve o'Clock.
Q. How long was it after you got into the Line, before you began to fire?
A. About Two Hours.
Q. What was you doing all that time?
A. Lying all that time in the Line, and yawing the Ship.
Q. What Diſtance was the *Eſſex* from you, when you brought up in the Line?
A. About Half a Mile, and to Windward of us.
Q. How far was the *Dorſetſhire* from you?
A. About Three-quarters of a Mile.
Q. You ſay in your Depoſition, You ſtood after the *Hercules*?
A. Yes.
Q. What do you mean by ſtanding after her?
A. The *Hercules* put her Helm aweather, and wore, and ſtood towards the Five Ships; and we wore after her.
Q. When the *Hercules* wore in that manner, What Diſtance was ſhe from her Admiral?
A. A little way.
Q. What Diſtance was you from the *Hercules* then?
A. About a Mile.
Q. If you wore ſo, you muſt be pretty near her?
A. I believe, we were about a Mile from her.
Q. How long did the *Hercules* continue in that Poſition of Wearing?

A. She

A. She did not wear quite round; but hauled up again, and ſtood under her own Admiral's Quarter.

Q. Did ſhe ſtand towards the Five Ships?

A. I apprehended, when ſhe was Wearing, that ſhe intended to go down to them.

Q. Was you within Gun-ſhot of the *Hercules*, when ſhe was wearing?

A. No.

Q. What was the Intent of ſtanding after her?

A. In order to engage her.

Q. How long did you ſtand after her?

A. No longer than till the Ship juſt got Way; and then the *Rupert* hauled up again.

Q. What hindered the *Rupert* from continuing to go after the *Hercules* to engage her, when ſhe hauled her Wind?

A. Becauſe, we muſt have paſſed the Fire of the *Dorſetſhire* and *Eſſex*.

Q. Don't you think they would haveleft off Firing?

A. I don't imagine they would have left off.

Q. What, fire at Friends! Do you think they would have fired upon our own Ships?

A. No; they were a Seventy and an Eighty Gun Ship.

Q. Where was the *Royal Oak* then?

A. Upon our Larboard-Quarter.

Q. At what Diſtance?

A. About a Cable, or Two Cables Length.

Q. Which began to engage the Five Ships firſt, the *Royal Oak*, or you?

A. The *Royal Oak*.

Q. What Diſtance was ſhe from you then?

A. About a Cable's Length.

Q. Where was ſhe then?

A. Upon our Weather-Quarter.

Q. How did the Enemy bear from you then?

A. They were coming up aſtern upon our Starboard-Quarter.

Q. Had you then fired any of your Starboard-Guns?

A. No.

Q. Which Guns did you fire at the Enemy firſt?

A. The Starboard-Guns.

Q. Where was the *Royal Oak* then?

A. Upon our Larboard-Quarter, about a Cable's Length diſtant.

Q. How often did you fire your Starboard-Guns, before you fired your Larboard-Guns?

A. I don't know.

Q. Do you remember firing your Larboard-Guns?

A. Yes; I remember the Larboard Guns were fired.

Q. What Endeavours were uſed to bring the Larboard-Broadſide to bear upon the Enemy?

A. I can't tell.

Q. Did you ſee the Enemy, when you fired the Larboard-Guns?

A. Yes.

Q. From what Part of the Ship?

A. Upon our Larboard-Bow, or rather abaft it.

Q. Where was the *Royal Oak* then?

A. Ahead of us.

Q. Did you fire your whole Larboard-Broadſide?

A. Yes.

Q. Was not the *Royal Oak* then in the Way?

A. No.

Q. How long did you continue Firing your Larboard-Guns?

A. Only one Broadſide.

Q. How long was it afterwards, before you fired your Starboard-Guns again?

A. As ſoon as we could bring them to bear: Then we tried a Shot; and, finding it went over, we continued Firing.

Q. How was the *Royal Oak* then?

A. She was aſtern, and upon our Larboard-Quarter.

Q. Was the Wind upon your Beam, at the time you put the Helm down, or when you fired your Larboard-Guns?

A. When we fired the Larboard-Guns, the Wind was almoſt ahead; for our Sails were ſhivering.

Q. You ſay, As ſoon as you brought your Starboard-Guns to bear again, you continued Firing?

A. Yes.

Q. How was the Wind then?

A. Almoſt right aft.

Q. How did the Ship's Head lie then? Pointing to the *Marlborough* and Admiral?

A. Yes.

Q. How long did you continue engaging within point-blank Shot?

A. About an Hour and an Half, I believe.

Q. What Damage might you receive?

A. A great many Shot went through our Sails and Rigging.

Q. Did you receive any in the Hull?

A. Yes, ſeveral.

Q. What! before you wore?

A. Yes.

Q. How many Shot did you receive?

A. Two in the Bow, One amidſhips, and Two upon the Quarter; all on the Starboard-ſide.

Q. Did they go through, or ſtick in the Sides?

A. I believe they did not go through.

Q. In what Part of the Bow?

A. Abreaſt of the Foremaſt.

Q. What Damage did you receive in your Maſts and Yards?

A. None at all, that I know of.

Q. And yet you engaged within Point-blank an Hour and an Half.—Do you know what Point-blank is? How near was you?

A. Within about a Quarter of a Mile.

Q. Was you near enough to do Execution?

A. Yes.

Q. And not receive any more Damage?

A. Their Shot went very high.

Q. Did the Enemy fire at you?

A. Yes, conſtantly.

Q. As briskly as you did at them?

A. Yes.

Q. Did the Enemy bear away from you, when you fired?

A. Yes; they edged away from us.

Q. Are you ſure thoſe Shot you received in your Hull was before you wore?

A. Yes; and ſome ſtuck in the Side.

Q. Were they large Shot, or Grape-ſhot?

A. Large Shot.

Q. And they ſtuck in the Side at a Quarter of a Mile Diſtance?

A. Yes.

Q. How long did the *Royal Oak* begin to fire before the *Rupert?*

A. About Half an Hour.

Q. When you was in a Line with the Admiral, What Ships were between you and the Admiral?

A. The *Dorſetſhire* and *Eſſex.*

Q. Were the *Dorſetſhire* and *Eſſex* in a Line with the Admiral?

A. No:—They were to Windward.

Q. When the Admiral run down to the Enemy, What Ships run down with him?

A. The *Marlborough*, *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak*.

Q. What Diſtance did you run, before you brought up with the Admiral?

A. I can't tell.

Q. What Diſtance was between the Enemy and you, before you brought up?

A. I can't tell.

Q. What Ship did the *Namur* engage?

A. The *Real.*

Q. What Ship did the *Marlborough* engage?

A. The *Hercules*, I believe.

Q. Do you remember any thing of the *Namur*'s running ahead, and leaving the Engagement?

A. Yes.

Q. What occaſioned her running ahead?

A. I can't tell.

Q. In what manner did ſhe engage after running ahead?

A. She fired her Stern-Chace.

Q. What was that occaſioned by?

A. I can't tell.

Q. Did you hear any thing that paſſed between the Captain and Officers upon the Quarter-deck?

A. Yes:—I heard the Captain ſay to the Lieutenant, He was very unfortunate to fall into ſuch a Station, where he had no Ship to engage; and that he would go down, and attack the Headmoſt of the Five Sail.

Q. Upon the Oath you have taken, Did you never hear the *Royal Oak* hail the *Rupert?*

A. No.

Q. Did you hear the Captain give Directions to the Maſter upon the Quarter-deck?

A. No.

Q. Did you hear any other Talk?

A. Yes:—The Lieutenant and Maſter ſaid to the Captain, That he was then in the Line; and, if he broke the Line, he might be broke: And the Captain ſaid, It was better to be broke for fighting, than for not fighting; and ordered the Maſter to hail the *Royal Oak.*

Q. Where did the Maſter go to hail the *Royal Oak?*

A. Upon the Poop.

Q. Which left off engaging thoſe Ships ſooneſt, the *Royal Oak*, or you?

A. I can't tell.

Q. Did you ever hear Captain *Ambroſe* ſay any thing to his Officers, or any of the Ship's Company ſay, that the *Royal Oak* was not doing her Duty?

A. No; I never did.

Q. Did you ſee the *Marlborough*'s Maſts go away?

A. I ſaw her ſoon after.

Q. What was you doing then?

A. We were engaging, a little before that, the headmoſt Ship of the Five.

Q. Had you began to engage, before the *Marlborough*'s Maſts went away?

A. It was about that time.

Q. When you engaged the Headmoſt of thoſe Five Ships, Was you neareſt to her, or to the Fireſhip?

A. We were neareſt to the headmoſt Ship.

Q. What Diſtance was you from the Fireſhip, when ſhe blew up?

A. About Half a Mile.

Q. Was the Fireſhip bore away for the *Real*, before you began to engage?

A. No.

Q. In the Evening, when you obſerved the Admiral wore, and you left off engaging thoſe Ships, Was the Headmoſt, or the Second, got up upon your Beam?

A. Yes; the Headmoſt was.

Q. Was the Second?

A. Yes; very near.

Q. During all the Engagement, Was you, or the *Royal Oak*, neareſt the Enemy?

A. We were.

Q. How was the *Royal Oak* then?

A. Aſtern; and upon our Larboard-Quarter.

Q. What Diſtance was ſhe from your Ship?

A. About Two or Three Cables Length.

Q. Which was fartheſt from you, the *Royal Oak*, or the Ship you engaged?

A. The Ship we engaged was the fartheſt.

Q. How much?

A. She was a little farther; not much.

Q. Did not the *Royal Oak* engage at the ſame time the *Rupert* did?

A. Yes.

Q. Which left off Engaging firſt, you, or the *Royal Oak?*

A. I don't know that.

Q. When the Fireſhip blew up, Was the Headmoſt of the *Spaniſh* Ships upon or before your Beam?

A. Upon our Beam.

Q. How was the Fireſhip, when ſhe blew up, with reſpect to you?

A. A little upon our Larboard-Bow; and ahead withal.

Q. Did you ſee any of the *Spaniſh* Ships fire at the Fireſhip?

A. I don't know, whether they did, or not.

Q. Was you engaging, when the Fireſhip blew up?

A. Yes.

Q. Was you engaging the Firſt and Second, or only one of the *Spaniſh* Ships?

A. The Headmoſt and Second were both firing at us.

Q. What time did you leave off Engaging?

A. About Four o'Clock, or a little after.

Queſtions from the Proſecutor for the Crown.

Q. When the Admiral ſtood to the Northward, on the Starboard-tack, after Wearing, in the Evening, What Station was the *Rupert* in?

A. The next Ship aſtern of the *Dorſetſhire*.

Q. How was the *Dorſetſhire* at that time?

A. I don't know.

Q. What Ship was the next aſtern of the *Rupert?*

A. I don't know.

Q. How many Shot did the *Rupert* receive in her Hull, or Maſts, in that whole Day's Action?

A. I can't tell.

Q. Did the Admiral, and his Diviſion, in ſtanding to the Northward, after he wore, in the Evening, paſs to Windward, or to Leeward, of the *Marlborough?*

A. To Leeward.

Q. What Ships, of that Diviſion, paſſed to Leeward?

A. I can't ſay.

Q. Did Your Ship?

A. Yes.

Q. Do you know of any other that paſſed to Leeward?

A. No.

Priſoner aſked,

Q. How long have you been at Sea?

A. Five Years.

Q. Are you rated Midſhipman, or Able, upon the Ship's Books?

A. I am rated Able.

Q. Have you ever received any Prize-Money as Midſhipman.

A. No.

Q. Did you ſee me, or hear me, go to the Man at the Helm, at any time, or not?

A. Yes: — I ſaw you go to the Man at the Helm, and tell him to keep the Helm aweather.

Q. What time was that?

A. I can't ſay juſtly.

Q. Was *Samuel Anthony* Cook, before he went out of *England*?

A. No.

Q. How long has he been Cook of the Ship?

A. A little time, about a Year and an half.

Then he withdrew.

Andrew Storey, Foremaſtman on board the *Rupert*, was called in, and ſworn.

His Depoſition read, as follows:

Andrew Storey, *belonging to his Majeſty's Ship the* Rupert, *at the time of the late Engagement in the* Mediterranean, *between his Majeſty's Fleet, and the Combined Fleet of* France *and* Spain, *on the* 11*th* February, 1743. *maketh Oath*;

THAT when Admiral *Mathews* made the Signal for the Line of Battle ahead, in the Morning of the aforeſaid Day, the *Rupert* got into the Line; and continued in it; and did not, during any time while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorſetſhire* and *Eſſex* were ſtationed between the *Marlborough* and *Rupert*, and were to Windward of the *Rupert*, and began to fire quickly after the Admiral.

That the *Rupert* bore down at the ſame time the Admiral did, and brought to in the Line; and, juſt after ſhe brought to, the *Real*'s Second aſtern bore away before the Wind; upon which the *Rupert* ſtood after her; whereupon ſhe run cloſe under the *Spaniſh* Admiral's Lee-Quarter; and then the *Rupert* brought to again, and lay with Topſails aback, to wait for the Five *Spaniſh* Ships aſtern, that were coming up; which were then about Four or Five Miles diſtant, and did not get up with the *Rupert* till about Three o'Clock; and then ſhe began to fire at them; but not till ſome time after they had fired at her.

That it was not poſſible for the *Rupert* to get near enough to the *Real*, and her Second, to do Execution, without being between Two Fires, and breaking the Line; becauſe ſhe muſt have gone between the *Dorſetſhire* and *Eſſex*, and the *Spaniſh* Admiral's Second, and been expoſed to their Fire.

That a few Guns were at firſt fired from the *Rupert*, at too great a Diſtance; but, when Captain *Ambroſe* obſerved they did not reach the Enemy, he ordered Firing to ceaſe; and afterwards cauſed Two or Three Guns to be fired, at a Diſtance of Time from each other; and, when he found the Shot would well reach the Enemy, he ordered Firing to be continued; tho' the Enemy had fired ſome time at the *Rupert*, and their Shot went far over her, before ſhe began to fire at all.

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering for their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their firſt Courſe, they muſt have been cloſe along-ſide the *Rupert*.

That the *Rupert* engaged the Headmoſt and Second of the ſternmoſt Ships of the Enemy about

about the time the *Marlborough*'s Maſts fell, the Headmoſt of thoſe Ships being then come up within about point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down to the *Real*.

That, when the Fireſhip blew up, ſhe was not above Half a Mile diſtant from the *Rupert*, and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, the Admiral wore to the Northward; upon which the *Rupert* ceaſed Firing, hauled her Wind, and paſſed to Windward of the Admiral and *Dorſetſhire*, and wore round after the *Dorſetſhire*; and was then again engaged with the *Spaniſh* Ships, in paſſing by them.

That this Deponent did not ſee any Signal of Diſtreſs made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement; nor did he hear the *Rupert* hailed from the *Royal Oak* during the Engagement.

That, to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement, acted agreeable to the Naval Inſtructions and Diſcipline; and behaved with Conduct and Courage; and, ſeveral times, expreſſed his Uneaſineſs, that the Enemy's Five Ships were ſo long coming up.

Andrew Storey.

Sworn before me, this
20th *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. In the Main-top.

Q. How long was it before you was in a Line with the Admiral, after the Admiral began to engage?

A. About a Quarter of an Hour, as near as I can gueſs.

Q. What did you do then?

A. We ſtood under our Three Topſails, with our Head the ſame Way as the Admiral's.

Q. Where was the *Dorſetſhire* and *Eſſex* at that time?

A. Both to Windward of us, upon our Larboard-Bow; and the *Eſſex* to Windward of the *Dorſetſhire*.

Q. How far might the *Eſſex* be to Windward of you?

A. Better than a Quarter of a Mile from us, a little upon the Bow.

Q. How long did you continue ſo, before you began to fire?

A. We did not begin then; we bore away again after that a little; and then brought to again, and kept the ſame Way the Admiral did; and we were then a little to Leeward of him.

Q. Did you ſee the *Royal Oak* then?

A. Yes.

Q. Where was ſhe then?

A. Upon our Larboard-Quarter, about a Cable's Length diſtant.

Q. Did you ſee the *Royal Oak* fire?

A. Yes, before us a good while:—She was above Two Cables Length aſtern of us, when ſhe began to fire.

Q. How long did ſhe continue to engage, before you began?

A. About Half an Hour.

Q. Was ſhe near enough to do Execution?

A. No.

Q. How near was you to the Enemy, when you began to fire?

A. They were coming up upon our Starboard-Quarter; and, when we firſt began to fire, our Guns did not reach the Enemy.

Q. How long was it afterwards, before you was near enough?

A. Almoſt Half an Hour, before they came up with us, that our Guns reached them.

Q. And then you think you was near enough to do Execution?

A. Yes; I think ſo.

Q. How long did you engage ſo?

A. I can't juſtly tell; I believe about Two Hours; it might be better; I can't tell; we had no Glaſs in the Top.

Q. What Damage did the Enemy do in that time?

A. They ſhot a great deal of our Rigging away, and their Shot went through our Sails.

Q. Had you any Men killed or wounded?

A. I heard, at Night, there were ſome wounded; but I can't tell: I was ſplicing the Rigging.

Q. Did you fire your Small-Arms.

A. No.

Q. Why did you not?

A. Becauſe they would not reach to do Execution.

Q. Was you ever ſo far to Leeward as the *Marlborough?*

A. Yes:—We were to Leeward of the *Marlborough*.

Q. At what time?

A. Juſt after we brought to, the Second time.

Q. At what time of the Day was that?

A. I believe, about Half an Hour after One.

Q. How do you know you was to Leeward of the *Marlborough?*

A. Becauſe I was at the Maſt-head.

Q. That was when you brought up again: What was you doing then?

A. We ſtood the ſame Way as the Admiral did.

Q. How long did you ſtand ſo?

A. It was not long before we bore down upon the Five Sail that were coming up aſtern of us.

Q. Did you bear down to the Five Sail, after you brought up to Leeward of the *Marlborough?*

A. Yes.

Q. Where did you bear down to?

A. Into

A. Into the Track of thoſe Five Sail, which were coming up aſtern.

Q. Were they right aſtern?

A. They were about Two Points upon our Starboard-Quarter.

Q. How long was you ſtanding down into the Track of thoſe Ships?

A. Almoſt Half an Hour.

Q. What did you do afterwards?

A. We brought the Ship to, throwed our Topſails aback, and yawed the Ship.

Q. Where was the *Royal Oak* then?

A. She might be about Two Points upon our Larboard-Quarter.

Q. Did you ever, in your Yawing, fire your Larboard-Guns?

A. Yes:—We fired the Larboard-Broadſide once; but not till after we had fired our Starboard-Broadſide.

Q. Where was the *Royal Oak*, when you fired your Larboard-Broadſide?

A. Upon our Larboard-Bow.

Q. Where was the Enemy then?

A. Abaft our Beam.

Q. What Diſtance was the *Royal Oak* from you, when you brought your Larboard-Guns to bear?

A. About Two Cables Length: It may be more; I can't ſay.

Q. Was that when you fired the Larboard-Guns?

A. Yes.

Q. But juſt before you brought your Larboard-Guns to bear, before you yawed, while your Head lay the ſame Way with the Admiral?

A. She was then about Two Cables Length diſtant, and about a Point or Two upon our Weather-Quarter.

Q. When you fired your Larboard-Guns, Did you fire them all fore and aft?

A. To the beſt of my Knowlege, all were fired, as far as I could ſee; but I can't be certain.

Q. Was not the *Royal Oak* in your Way then?

A. No.

Q. After the laſt Bearing down, Which Side of the *Marlborough* did you ſee open to you?

A. The Starboard-ſide.

Q. How was the Wind at the time you yawed, when you put your Helm aſtarboard, to bring your Larboard-Broadſide to bear?

A. About Two Points upon our Larboard-Quarter.

Q. I mean inſtantly, when you put your Helm aſtarboard to yaw, at the time your Head lay with the Admiral, How was the Wind?

A. I think, the Wind was then upon the Beam; I can't juſtly ſay.

Q. When you yawed about in that manner, Were your Yards ſquare?

A. Yes.

Q. When you firſt brought up in a Line with the Admiral, What Ships were then in a Line between you and the Admiral?

A. Only the *Marlborough* in a Line; the others were to Windward.

Q. Do you remember what Diſtance you might run down, before you brought to in a Line with the Admiral?

A. I can't tell.

Q. What Ship did the *Namur* engage?

A. The *Real.*

Q. What Ship did the *Marlborough* engage?

A. The *Real.*

Q. Do you remember any thing of the *Namur*'s running ahead of the *Marlborough?*

A. The *Namur* was ahead of the *Marlborough* all the time.

Q. Do you remember the *Namur*'s firing her Stern-Chace?

A. Yes.

Q. Did the *Rupert* endeavour to go nearer the *Hercules?*

A. The *Hercules* went under her Admiral's Starboard-Quarter.

Q. What, out of Sight?

A. No, not quite out of Sight.

Q. How long had you been engaged, before the *Royal Oak* hauled her Fore-tack on board, and left you to engage by yourſelves?

A. I can't tell the Time.

Q. Was it juſt before the Admiral wore?

A. I can't ſay.

Q. Do you remember the *Royal Oak*'s hauling her Fore-tack on board?

A. Yes; I remember her hauling her Fore-tack on board, and hauling upon our Beam, or rather abaft our Beam.

Q. Was that at the time you yawed your Ship, and fired your Larboard-Guns?

A. No: It was not at that time: It was afterwards.

Q. Do you know any thing of the *Cambridge?*

A. Yes; I ſaw her fire a Broadſide or two.

Q. You ſay, You ſaw the *Royal Oak*'s Fore-tack hauled on board: Cannot you remember when it was?

A. No.

Q. Was it while you was engaging the Headmoſt of thoſe Ships?

A. Yes.

Q. Were not the People in the Main-top with you, uneaſy at her leaving you to engage by yourſelves?

A. We could not help that; it did not trouble us in the leaſt.

Q. Did you never ſee the *Royal Oak* to Leeward of the *Rupert?*

A. No; I never did.

Q. Muſt you not have ſeen her, if ſhe had been to Leeward?

A. Yes.

Q. You ſay, You was quartered in the Main-top; and you ſay in your Depoſition, That Captain *Ambroſe* was very uneaſy, that he had not a Ship to engage with.

A. Yes.

Q. Did you in the Main-top hear Captain *Ambroſe*'s Uneaſineſs?

A. Yes; I heard it.

Q. Then, no doubt, you heard the Conſultation between the Captain and his Officers?

A. Yes; I was called down by the Captain out of the Main-top, juſt at that time, to carry up a Caſe of Muſquet-Cartridges; and I heard the Captain ſay, We will bear down to theſe Five Ships: And Lieutenant *Le Craſs* ſaid, pointing to the Admiral, You are to Leeward of the Line; and thoſe Five Ships will be preſently up with you; and then you'll have ſomething to do: The Captain ſaid, I don't care for that; I will bear down to them.

Q. What time was that?

A. Juſt when we were going to hail the *Royal Oak*; and the Lieutenant pointed to ſhew Captain *Ambroſe*, that he was to Leeward of the Line.

Q. Did you obſerve yourſelf, that you was at that time in a Line?

A. Yes.

Q. What Ship was you in a Line with?

A. With the Admiral, or rather to Leeward of him.

Q. Where was the *Marlborough?*

A. To Leeward of the Admiral.

Q. How do you know ſhe was to Leeward?

A. I ſaw a little Space open between the Admiral and *Marlborough.*

Q. How do you know you was in a Line?

A. Becauſe I looked ahead, and ſaw them on the Larboard-ſide.

Q. Did your Ship's Head lie exactly as the Admiral's did?

A. Yes; as near as I could gueſs.

Q. Where did you ſee the *Marlborough* then?

A. Right ahead, rather upon our Larboard-Bow.

Q. And ſtill you ſaw a Space open between the Admiral and *Marlborough?*

A. Yes; I ſaw a Space of about a Ship's Breadth between the Admiral and *Marlborough.*

Q. Was you upon the Main-top then?

A. No; I was upon the Quarter-deck then.

Q. Which Ship began to engage thoſe ſternmoſt Ships firſt, you, or the *Royal Oak?*

A. The *Royal Oak.*

Q. How long before?

A. About Half an Hour.

Q. How did ſhe lie then?

A. A little upon our Larboard-Quarter.

Q. How much upon your Larboard-Quarter?

A. About a Point, as near as I can gueſs; and better than Two Cables Length diſtant.

Q. At that time did your Ship's Head, and the *Royal Oak*'s Head, bear upon the ſame Point of the Compaſs?

A. I can't ſpeak exactly to that.

Q. Was not the *Royal Oak* then nearer to the Enemy than you was?

A. Yes, to be ſure, ſhe muſt, as the Enemy were coming up aſtern.

Q. When the *Royal Oak* was engaged Half an Hour before you was, Did any body then take notice, or find Fault, that ſhe was to Windward of her Station, and not engaged properly?

A. I can't ſay that.

Q. How long did you and the *Royal Oak* continue engaged together?

A. About Two Hours, or better.

Q. Which left off Engaging firſt?

A. The *Royal Oak* left off, before we did.

Q. How long?

A. I can't juſtly ſay how long.

Q. Did you ever obſerve any other Ship engage thoſe Ships, beſides the *Royal Oak*, and you?

A. Yes; the *Cambridge* fired a Broadſide or two at them, and the *Dunkirk* fired at them.

Q. How did the *Cambridge* and *Dunkirk* bear at that time, with regard to your Ship?

A. I can't tell; but I think near aſtern of us.

Q. When the *Cambridge* and *Dunkirk* engaged aſtern of you, Where were the reſt of the Vice-Admiral's Diviſion?

A. All that I ſaw were coming up to Windward upon our Larboard-Quarter.

Q. How much upon your Quarter?

A. About Two Points.

Q. When the *Cambridge* and *Dunkirk* engaged thoſe Ships, How far was the Headmoſt of the *Spaniſh* Ships ſhot up with regard to you?

A. The *Cambridge* was about a Quarter of a Mile from us.

Q. But how was the Headmoſt of the Five Ships?

A. About Three Cables Length from us?

Q. Was ſhe before the Beam, or abaft the Beam?

A. I never ſaw her before the Beam; ſhe was a little abaft the Beam.

Q. Where was the Second Ship then?

A. She was cloſe to the Headmoſt.

Q. Where was the *Royal Oak*, when the *Cambridge* engaged them?

A. I can't juſtly ſay.

Q. Did you ever hear any body ſay, or obſerve the People find Fault, That ſhe had deſerted you?

A. No.

Q. How many Shot had you through the Main-top?

A. We had ſome; I ſaw no Muſquet-Bullets.

Q. Do you remember, how many Shot you had through your Main-topſail?

A. Yes; ſeveral.

Q. How many?

A. I can't juſtly tell how many there were.

Q. Was it ſo ſhot, as to be unbent and ſhifted next Day?

A. No.

Q. Did you ever hear of any Shot that came through your Ship's Side?

A. There was a Shot went through the Ship's Side, upon the Larboard-Bow.

Q. When

Q. When was that?

A. At Night, after we wore.

Q. Where did that Shot go to?

A. It went through the Larboard-ſide, and made a Dent in the other Side between the Third and Fourth Port.

Q. What Shot had you, when you engaged with the Larboard-tacks on board?

A. None went through the Starboard-ſide; one ſtruck the Side; but I can't tell whether it ſtuck in, or dropt out.

Q. Did any of the Enemy's Ships ever paſs your Beam, before you wore?

A. No.

Q. How did theſe Shot come, that came through your Topſail?

A. They muſt come over the Starboard-Quarter.

Q. Did you obſerve any of the Shot cut your Main-topmaſt-ſhrouds, or Back-ſtays?

A. Yes; they cut Two Top-gallant Back-ſtays, and Two Topmaſt Back-ſtays, one on each Side.

Q. How high did the Shot ſtrike the Starboard Back-ſtay above the Top?

A. About my Height.

Q. Did it ſtrike any of the Topmaſt-ſhrouds, or the Maſts?

A. No.

The Queſtions delivered in by the Proſecutor for the Crown, were then asked; *viz.*

Q. When the Admiral ſtood to the Northward on the Starboard-tack, after Wearing, in the Evening, What Station was the *Rupert* in?

A. The Second Ship aſtern of the Admiral: The *Dorſetſhire* was between us and the Admiral.

Q. What Ship was next aſtern of the *Rupert?*

A. I can't tell.

Q. How many Shot did the *Rupert* receive in her Hull and Maſts, in that whole Day's Action?

A. I can't ſay.

Q. Did the Admiral, and his Diviſion, in ſtanding to the Northward, after Wearing, paſs to Windward, or to Leeward, of the *Marlborough?*

A. The Admiral, *Dorſetſhire*, and *Rupert*, paſſed to Leeward of her: I don't know, as to the reſt. The *Marlborough* was then towed to Windward, out of the Line.

Then the Court aſked,

Q. After the Admiral began to engage, and before you began to engage, Did you obſerve the *Royal Oak* to fire at the Ship aſtern of the *Hercules?*

A. No: There was no Ship for her to fire at, till the Five Sail came up, unleſs a Ship came out of the Skies for her to engage: They muſt have had very good Eyes to have ſeen that Ship, which was inviſible to every body elſe: There was no other Ship, but the Five Sail coming up.

Q. But was not That one of the Five?

A. No; they kept all together.

Q. Were they all cloſe to one another?

A. The Two Headmoſt of them kept cloſe together; there was a little Diſtance between them and the other Three; and thoſe Three alſo kept cloſe together.

Q. Were they in a good Line?

A. They kept as good a Line as could be.

Q. Did you obſerve, when the Admiral wore, whether you hauled your Wind, or not, to let him paſs to Leeward of you?

A. I did not ſee the Admiral, before I ſaw him to Leeward of the Topſail: I know, we hauled our Wind; and the Admiral paſſed to Leeward of us.

Q. Did you ſee the *Marlborough*'s Maſts go away?

A. No.

Q. Did you ſee the Fireſhip blow up?

A. I did not.

Q. Why did you haul your Wind?

A. I don't know for what Reaſon: I did not ſee the Admiral, till he got abaft our Beam.

Q. How long had you done Engaging, before the Admiral wore?

A. We had not done Engaging, till ſuch time as the Admiral wore, and till we hauled our Wind, a little before I ſaw him upon the other Tack.

Priſoner aſked,

Q. When the Admiral firſt made the Signal for the Line, about Nine or Ten o'Clock, Were the Ships aſtern of him all in a Line then?

A. No; they were not.

Q. When the Admiral firſt bore away for the *Real*, What Sail had we ſet?

A. Three Topſails.

Q. Was there any other Sail ſet afterwards?

A. When the Admiral bore away, we were all in Confuſion, ſetting the Foreſail and Top-gallant-ſails; and the Main-topmaſt-ſtayſail was hoiſted; but I can't ſay, what Stayſails were hoiſted forwards.

Q. Did you ſee any Shot ſtrike the *Royal Oak?*

A. Yes; I ſaw a Shot ſtrike the Stopper of her Anchor; and I called out to the People in the Top, A Shot has ſtruck the Stopper of the *Royal Oak*'s beſt Bower-Anchor; and I ſaw the Anchor drop down into the Water.

Q. Where was the *Royal Oak* then?

A. Upon our Larboard-Beam, or rather before it.

Q. Do you think, I had any other Method of getting nearer the Enemy, than the Methods I took?

A. No; I don't know any Way: It was impoſſible, unleſs you had gone to Leeward of the Enemy.

Q. Did I, or did I not, give Orders to fire a Gun, to try, if it could reach the Enemy?

A. Yes; I heard you order a Gun to be fired; and ſeveral were then fired; but I only heard you order one.

Court. It is very extraordinary, that you ſhould hear that in the Main-top!

Witneſs. I was then leaning over the Top-Rail.

Q. Did I, or did I not, afterwards give a Second Order, to try another Gun?

A. Yes, you did.

Q. Did you obſerve, whether the Shot reached?

A. I think, the Shot went over by the Foremaſt.

Q. Over what Ship?

A. The Headmoſt of the Five Sail; and I ſaw it fall, on the other Side of her, into the Water.

Q. When the Enemy fired upon me, after I fired my Broadſide, Did their whole Broadſide go over me, or only a few? Was it only a Pop, Pop, Pop, now-and-then?

A. I think, their whole Broadſide went over us: If they had fallen ſhort, I muſt have ſeen them, where I was quartered.

Q. How far did you obſerve their Shot go over us?

A. To be ſure, as far as we were from the Enemy.

Q. What Station was you in, on board the *Rupert?*

A. Captain of the Main-top.

Q. Did you ever hear any of the People find Fault with my Behaviour; or ſay, I could do more than I did? Or did they not ſee or hear me bemoan my Misfortune, as an unhappy Devil, to be in the Situation I was?

A. I never heard any body complain, or ſay, You did not do your Duty.

Q. I ſay, Did you not hear me bemoan myſelf to be placed in ſuch a Situation, where I could do no Service ſooner than I did?

A. Yes; I did ſee you very uneaſy, and wring your Hands; but I can't ſay what Words paſſed.

Then he withdrew.

Sabine Deaken, Maſter's Mate on board the *Rupert*, was called in, and ſworn.

His Depoſition read, as follows;

Sabine Deaken, *Maſter's Mate of his Majeſty's Ship the* Rupert, *at the Time of the late Engagement, in the* Mediterranean, *between his Majeſty's Fleet, and the Combined Fleets of* France *and* Spain, *on the* 11*th* February, 1743. *maketh Oath*;

THAT, when Admiral *Mathews* made the Signal for the Line of Battle ahead in the Morning of the aforeſaid Day, the *Rupert* got into the Line, and continued in it; and did not, during any time while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorſetſhire* and *Eſſex* were ſtationed between the *Marlborough* and *Rupert*; and were to Windward of the *Rupert*; and began to fire quickly after the Admiral.

That the *Rupert* bore down at the ſame time the Admiral did, and brought to in the Line; and, juſt after ſhe brought to, the *Real*'s Second aſtern bore away before the Wind; upon which the *Rupert* ſtood after her; whereupon ſhe run cloſe under the *Spaniſh* Admiral's Lee-Quarter; and then the *Rupert* brought to again, and lay with Topſails aback, to wait for the Five *Spaniſh* Ships aſtern, that were coming up; which were then about Four or Five Miles diſtant; and did not get up with the *Rupert* till about Three o'Clock; and then ſhe began to fire at them; but not till ſome time after they had fired at her.

That it was not poſſible for the *Rupert* to get near enough to the *Real*, and her Second, to do Execution, without being between Two Fires, and breaking the Line; becauſe ſhe muſt have gone between the *Dorſetſhire* and *Eſſex*, and the *Spaniſh* Admiral's Second, and been expoſed to their Fire.

That a few Guns were at firſt fired from the *Rupert* at too great a Diſtance; but, when Captain *Ambroſe* obſerved they did not reach the Enemy, he ordered Firing to ceaſe; and afterwards cauſed Two or Three Guns to be fired at a Diſtance of Time from each other; and, when he found, the Shot would well reach the Enemy, he ordered Firing to be continued; though the Enemy had fired ſome time at the *Rupert*, and their Shot went far over her, before ſhe began to fire at all.

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering for their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their firſt Courſe, they muſt have been cloſe along-ſide the *Rupert*.

That the *Rupert* engaged the Headmoſt of the Five ſternmoſt Ships of the Enemy, about the Time the *Marlborough*'s Maſts fell, the Headmoſt of thoſe Ships being then come up within about point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down to the *Real*.

That, when the Fireſhip blew up, ſhe was not above Half a Mile diſtant from the *Rupert*, and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, the Admiral wore to the Northward; upon which, the *Rupert* ceaſed Firing, hauled her Wind, and paſſed to Windward of the Admiral and *Dorſetſhire*, and wore round after the *Dorſetſhire*; and was then again engaged with the *Spaniſh* Ships, in paſſing by them.

That this Deponent did not ſee any Signal of Diſtreſs made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement; nor did he hear the *Rupert* hailed

hailed from the *Royal Oak* during the Engagement.

That, to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement, acted agreeable to the Naval Inſtructions and Diſcipline; and behaved with Conduct and Courage; and ſeveral times expreſſed his Uneaſineſs, that the Enemy's Five Ships were ſo long coming up.

Sabine Deaken.

Sworn before me, this 20th *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?
A. At the Braces.
Q. What Countryman are you?
A. I'm an *Iriſhman.*
Q. You ſay, You went down, and was in a Line with the Admiral, ſoon after he began to engage?
A. Yes.
Q. Was you not taken up by a *Spaniſh* Man of War, before you got into the Line?
A. No.
Q. Did you not ſee the *Royal Oak* engage a Ship to Windward of the Line, ſoon after the Admiral began to engage?
A. No: There was no Ship for her to engage.
Q. How long did you lie in the Line, before you began to engage?
A. About Two Hours.
Q. You ſay in your Depoſition, The Reaſon you did not ſhoot ahead, and cloſe the Line, was, becauſe of the *Dorſetſhire*'s and *Eſſex*'s Fire?
A. Yes.
Q. Do you imagine, that, if you had endeavoured to cloſe the Line, they would have fired at you?
A. We did not care to run the Riſque of their Fire.
Q. So, rather than run the Riſque of their Fire, you lay inactive Two Hours:—What did you do, after you got into the Line?
A. About a Quarter of an Hour after we firſt got into down the Line, the *Hercules* bore away; upon which we put our Helm aweather, and ſet our Foreſail; and, by the time our Head ſtemmed for her, ſhe hauled her Wind again, under her Admiral's Lee-Quarter.
Q. Did you ſee the Admiral ſhoot ahead?
A. Yes; but it was a long time after that: It was after we wore down in the Track of the Five Ships coming up.
Q. When the Admiral ſhot ahead, the *Marlborough* was engaged with Two Ships alone?
A. Yes.
Q. As you was not within Gun-ſhot, Don't you think it would have been better, and more for his Majeſty's Service, for you to have ſhot up, and cloſed with the *Marlborough?*
A. We were, ſoon after that, cloſely engaged: We were at a great Diſtance from her.
Q. How far?
A. About Two Miles.
Q. That is not ſo great a Way: Why did you not go down to aſſiſt the *Marlborough?*
A. We engaged the Five Ships; and, when we bore away down to the Track of the Five Sail coming up, there were Four Ships, the *Marlborough*, *Namur*, *Eſſex*, and *Dorſetſhire*, to engage the *Real*, and the *Hercules*.
Q. Did you not ſay, You ſaw the *Namur* ſhoot ahead? Why did you not then go down to the Aſſiſtance of the *Marlborough?*
A. That was after we engaged the Five Sail.
Q. You ſaid juſt now, That you engaged thoſe Five Sail, ſoon after you ſaw the *Marlborough* engaged alone: How long did you ſee the *Marlborough* engaged alone?
A. I never ſaw her engaged alone: If I ſaid ſo, it was a Miſtake.
Q. Soon after the Admiral bore down to the Enemy, you ſay, The *Rupert* bore down: Did not the *Royal Oak* bear down with you at firſt of all?
A. I can't be poſitive:—I ſaw her upon our Weather-Quarter.
Q. When you brought up at firſt, Do you remember nothing of the *Royal Oak*'s being almoſt on board you?
A. No; I do not remember any thing of it.
Q. You was quartered at the Braces?
A. Yes.
Q. Did you ſtand upon Deck, or upon the Booms?
A. Upon Deck.
Q. When you yawed, to bring your Larboard-Broadſide to bear, Do you remember how your Braces were hauled in? Were your Yards ſquared?
A. Yes; our Yards were ſquared.
Q. Did you bring your Topſails aback, when you fired your Larboard-Broadſide?
A. Yes.
Q. Did you alſo bring them aback again, when you fired your Starboard-Broadſide?
A. No.
Q. When you brought to in a Line with the Admiral, Where did you obſerve the *Eſſex* to bring to?
A. To Windward; upon the *Dorſetſhire*'s Weather-Quarter, and upon the *Rupert*'s Weather-Bow.
Q. What Diſtance was the *Eſſex* from you?
A. Half a Mile, or Three-quarters of a Mile.
Q. Which was the neareſt to the *Real*'s Second, the *Eſſex*, or you?
A. The *Eſſex* was abreaſt of her, and we aſtern of her; and I don't know which was neareſt; but we did not think ourſelves within Gun-ſhot.
Q. Did you obſerve the *Marlborough* loſe her Maſts?

A. Yes.

Q. What was you doing then?

A. Much about that time, we were clofely engaged.

Q. If you were clofely engaged, I fuppofe, you fired your Small-Arms then?

A. No; we were not near enough.

Q. When the Firefhip went down, What was you doing?

A. We were then engaged with the Five Sail.

Q. Was you fingly engaged with thofe Ships?

A. No; the *Royal Oak* engaged alfo.

Q. Which began firft to engage, you, or the *Royal Oak?*

A. The *Royal Oak.*

Q. How long did fhe begin, before you began?

A. About Half an Hour, or a Quarter of an Hour; I can't be exact in the Time.

Q. What Damage did you receive, before you wore?

A. I can't be fure.

Q. Did you receive any?

A. I faw fome of our Rigging fhot away, and feveral Holes in our Sails—We had one Shot took the Barricado upon the Booms.

Q. Did no Shot come through your Sides?

A. Not that I know of.

Q. What Men were killed, or wounded?

A. I can't tell, whether any were killed, or wounded, before we wore.

Q. Did you perceive any Damage you did to the Enemy?

A. No.

Q. Did you fee none of the Enemy's Sails, or Rigging, fhot; or Maſts wounded?

A. No; I did not obferve them.

Q. Were the Ships you engaged, upon your Broadfide, or upon your Quarter?

A. The Headmoft was upon our Beam.

Q. How long did you engage her, while fhe was upon your Beam?

A. Some time—I can't be fure what time.

Q. Did fhe ever get before your Beam?

A. No; I am very fure fhe never got before our Beam.

Q. You fay, You brought up in a Line; and that, a Quarter of an Hour afterwards, the *Hercules* bore up round; and that you bore after her: What occafioned the *Hercules*'s Bearing up?

A. I believe, the *Dorfetfhire*'s Fire—She luffed up again, and went under the *Real*'s Quarter.

Q. Did fhe run fo far under the *Real*'s Quarter, that you could not fee her?

A. No; we had her open, all the Time.

Q. Do you think, the *Dorfetfhire* had her open?

A. I believe fhe had.

Q. You did not try, whether your Guns would reach her.

A. No.

Then the Queſtions from the Profecutors for the Crown were asked.

Q. When the Admiral ſtood to the Northward, on the Starboard-tack, after Wearing, in the Evening, What Station was the *Rupert* in?

A. The *Dorſetſhire* was next aſtern of the Admiral, and the *Rupert* next aſtern of the *Dorſetſhire.*

Court aſked,

Q. How long have you been at Sea?

A. Nine Years.

Q. In what Ships?

A. The *Greyhound*, and *Rupert.*

Proſecutor's Queſtions continued.

Q. What Ship was next aſtern of the *Rupert?*

A. I can't ſay.

Q. Do you know how many Shot the *Rupert* received in her Hull, and Maſts, in that whole Day's Action?

A. I don't know.

Q. Did the Admiral, and his Diviſion, in ſtanding to the Northward, after Wearing, paſs to Windward, or to Leeward, of the *Marlborough?*

A. The Admiral, *Dorſetſhire*, and *Rupert*, paſſed to Leeward of the *Marlborough.*

Q. Do you know, Whether any paſſed to Windward of her, or not?

A. I can't tell.

Then Mr. *Bellas*, one of the Profecutors for the Crown, delivered a Paper into Court, containing Three Queſtions; which he deſired might be put to this Witneſs, and to the Officers of the *Rupert*, who had not been examined; *viz.*

1. Did Captain *Ambroſe* ever ſend for your Journal, and direct you to write it over again, according to his Dictating?

2. Were there any Alterations made in your Journal, about the Time the Vice-Admiral was ſuſpended, or afterwards? If Yea, What were theſe Alterations, or Amendments?

3. Did Captain *Ambroſe* ever, in Perſon, or by any Agent of his, interfere with your writing your Journal?

Upon which, the Marſhal was ordered to remove the Priſoner out of Court; and the Witneſſes, and Audience, were directed to withdraw; and the Court took the ſaid Queſtions into Conſideration; and, after ſome Debate, the following Queſtion was propoſed:

Is it the Opinion of the Court, That thoſe Queſtions are proper to be put?

But the following previous Queſtion being propoſed; *viz.*

Is it the Opinion of the Court, That thoſe Queſtions tend to make the Perſons, to

whom they are desired to be put, accuse themselves?

It was put to the Vote, Whether the general, or previous, Question should be put: And the Court agreed (Eleven to Ten), That the general Question should be put; which was done accordingly; *viz.*

Is it the Opinion of the Court, That these Questions are proper to be put?

And the Court agreed (Eleven to Ten), That the First and Third were proper to be put.

One was for putting all the Three.

Ten were for the First, and Third.

Ten were for putting none of them.

Then the Marshal was ordered to bring in the Prisoner again, and the Witness was called in, and the Audience were re-admitted; and then, agreeable to the Court's Resolution, the Witness was asked the Two following Questions, by the Judge-Advocate.

Q. Did Captain *Ambrose* ever send for your Journal, and direct you to write it over again, according to his Dictating?

A. No.

Q. Did Captain *Ambrose* ever, in Person, or by any Agent of his, interfere with your writing your Journal?

A. No.

Court asked,

Q. Do you remember the Time when the *Rupert* yawed so, as to bring her Larboard-Broadside to bear upon the Enemy?

A. Yes.

Q. How was the Wind, at that time?

A. Abaft the Beam, a great way.

Q. How many Points?

A. About Four.

Q. How did the *Royal Oak* bear from you, and at what Distance, at the time you put the Helm astarboard, in order to bring your Larboard-Guns to bear upon the Enemy?

A. I did not then observe the *Royal Oak*.

Q. After your Head was brought to, as far as the Wind would permit, in order to fire your Larboard-Guns; Did you then see the *Royal Oak?*

A. Yes.

Q. How did she bear of you, then?

A. Upon our Larboard-Bow.

Q. At what Distance?

A. About Two Cables Length.

Q. At what time of the Day did the Wind shift?

A. A little before that, the Wind veered to the Northward.

Q. Can you tell how many Points the Wind did shift?

A. I can't say.

Q. Did you observe what Sail the Admiral had out, when he engaged?

A. When he bore away, I think he had his Topsails and Foresail.

Q. Did he, and the *Marlborough*, engage under Way, or bring to, till the *Marlborough* lost her Masts?

A. Every time I observed them, they were under Way, with their Topsails full.

Q. How did the *Spanish* Ships bear upon you at first? At what Distance might the Headmost be from you, when you first brought to, in the Line?

A. I believe, about Four Miles.

Q. At what o'Clock was it, that you first brought to, in the Line?

A. About One o'Clock.

Q. What Distance might you bear down, after you brought to, in the Line, before you began to engage those Ships?

A. The Admiral engaged with the Wind Large.

Q. That is not an Answer to the Question: What Distance might you bear down, to get into the Track of those Ships?

A. We bore down about Half a Mile into their Track.

Q. And in what time did they come up to you, so as to engage within Reach of your Guns?

A. They began to fire some time before we began to engage them; and we began to engage about Three o'Clock.

Q. What Distance might you be from the *Hercules*, when you first brought to?

A. About Three-quarters of a Mile, or a Mile.

Q. Did the *Royal Oak*, or *Rupert*, begin to engage the sternmost Ships, first?

A. The *Royal Oak* did.

Q. When you began to engage, Where was the *Royal Oak?*

A. About Two Cables Length distant, upon our Weather-Quarter.

Q. How many Points, upon your Quarter?

A. About a Point and an Half, or thereabouts.

Q. What Sail had the *Royal Oak*, then?

A. I can't tell.

Q. What Sail did you engage with?

A. Under our Topsails.

Q. Upon your starboarding your Helm, to bring your Larboard-Guns to bear, Did you observe the *Royal Oak* to make any Motions, by altering her Course, or backing her Sails, to keep clear of you?

A. I did not.

Q. Do you think the *Royal Oak*, which was but Two Cables Length distant, and a Point upon your Weather-Quarter, was not in Danger of being on board you, upon your starboarding your Helm?

A. I did not see, that she was in any Danger of being on board of us; for she was Two Cables Length from us.

Q. When you first brought to, in a Line with the Admiral, How was the *Essex*, with regard to your Ship?

A. Upon

A. Upon our Weather-Bow.

Q. At what Diſtance from you?

A. About Three Cables Length, and about Two Points upon our Weather-Bow.

Q. Was there any way you could have contrived, to have joined thoſe Ships ſooner than you did by the Methods you took?

A. No; I don't know any other way—We run down, directly, into their Track.

Q. Did they alter their Courſe, when you got into their Track?

A. They bore away, upon our Firing upon them; that I am poſitive of.

Q. At that time, was you to Leeward of the *Marlborough*, or in a Line with her?

A. We were to Leeward of her.

Q. Do you reckon, If you had not engaged the Headmoſt of thoſe Ships, as you did, Would ſhe not have got up, and have deſtroyed the *Marlborough*, before ſhe was towed out of the Line?

A. I don't know—But, upon our Firing upon them, they bore away.

Q. What time did you obſerve they bore away?

A. A little after Three o'Clock.

Q. Did you then ſee the Fireſhip?

A. Not at that time.

Q. Why, then, you muſt ſoon have been out of random Shot of them.

A. No—For, as they edged away, we edged after them.

Q. Did the Admiral engage, as long as you did, upon the Larboard-tack, before you wore?

A. The Admiral had almoſt hauled off, before we began to engage—He had hauled off, before we began to engage—It was much about that time.

Q. What o'Clock was it, then?

A. About Three.

Q. Did you paſs to Windward, or to Leeward, of the *Marlborough*, upon your Oath, in your Wearing?

A. To Leeward of her.

Q. Did you haul the Wind, before you wore, to get clear of the Admiral?

A. Yes; we hauled our Wind, and ſhot out ahead of the Admiral; and wore round, after the *Dorſetſhire*.

Q. Did you ſee the Fireſhip blow up?

A. Yes.

Q. Where was the *Rupert*, then?

A. Between the Enemy, and her—We had the Headmoſt of the Enemy upon our Starboard-ſide, and the Fireſhip right ahead.

Q. How far was the Fireſhip from you, then?

A. About Half a Mile.

Q. How far was you, then, from the Enemy?

A. About Three Cables Length.

Q. Was you nearer the Fireſhip, than the *Marlborough?*

A. Yes.

Q. Was you nearer than the *Dorſetſhire?*

A. I can't ſay—I did not take notice of the *Dorſetſhire*, then.

Q. You ſay, You was to Leeward of the Enemy, when the Fireſhip blew up.

A. No; we had the Enemy upon the Starboard-ſide, and the Fireſhip right ahead.

Q. Was you as far to Leeward, as the Fireſhip?

A. No; ſhe was right ahead.

Q. Do you remember any of the *Spaniſh* Ships Firing at the Fireſhip?

A. They did fire at her.

Q. Did they leave off Firing at you, when they fired at the Fireſhip?

A. No; we were then cloſely engaged with them.

Q. In this cloſe Engagement, How many Men had you killed, and wounded? And how many Shot came through your Ship?

A. I can't ſay.

Q. Do you remember, at any time after the Fireſhip blew up, or, rather, at the time you wore, That you was in any Danger of the Fire that was on the Water from the Fireſhip's Wreck? Or, Whether there was any Conſultation about avoiding it?

A. I did not hear any Talk of Danger—I only remember, that we went about a Quarter of a Mile to Windward of it: But I don't know of any Conſultation about it.

Q. Did you never ſee a ſingle Ship, that the *Royal Oak* firſt engaged?

A. I never ſaw any ſingle Ship—I believe ſhe fired at the Headmoſt of the Five, before we did.

Q. Did you engage the Headmoſt of thoſe Five Ships, as near as the *Marlborough* did the *Real?*

A. No; I don't think we did.

Q. Was the *Real* the leewardmoſt Ship of the Enemy?

A. Yes.

Q. Had the *Real* then bore away?

A. Yes.

Q. What Diſtance was the Admiral from the Fireſhip, when ſhe blew up?

A. I can't tell.

Q. Did you ſee any thing of a *Spaniſh* Launch going towards the Fireſhip?

A. No.

Q. Can you give no Account at all of the Admiral, when the Fireſhip blew up?

A. No.

Q. How did the Admiral's Head lie? Did he bear down, to cover the Fireſhip?

A. I ſaw him, when he was bearing away for Wearing: But I did not take notice of him, when the Fireſhip blew up.

Q. At the Time you obſerved the Admiral's Head bearing away, Was there any Signal out, for Wearing?

A. I ſaw a White Flag out, for calling in Cruiſers.

Q. What, do you think, was the Occaſion of the *Real*'s Bearing away?

A. I

A. I can't ſay.

Q. Was there no Talk about it?

A. I did not hear any.

Q. I think you ſaid, the *Real* was the leewardmoſt Ship of the Enemy: Where was the *Hercules*, then?

A. I believe ſhe was gone away to the Southward.

Q. Was that to Windward, or to Leeward, of the Admiral?

A. I can't ſay; but I believe, to Leeward of him.

Then the Proſecutor for the Crown delivered a Paper into Court, containing Three Queſtions, which he deſired might be asked the Witneſs; and they were asked by the Judge-Advocate, as follows:

Q. Was the *Eſſex*, during any, and what Part of the Engagement, with the Larboard-tacks on board, within Gun-ſhot on a Point-blank?

A. I can't really ſay—But, to the beſt of my Knowlege, I believe ſhe was not.

Q. What was the neareſt Diſtance between the *Rupert* and *Eſſex*, after you hauled up into the Line?

A. Better than a Quarter of a Mile upon our Bow.

Q. Was your Spritſail ever ſet on Fire, during the Engagement? And by what means?

A. I heard it was; but I did not ſee it.

Court aſked,

Q. Did you never hear the People of the *Eſſex* hail you, to tell you your Sprit-ſail was on Fire, and bid you put it out?

A. I don't remember it; if they did, it muſt be at the time of Wearing.

Q. How near was the *Eſſex* to you, when you wore?

A. She muſt be very near, to ſet our Sprit-ſail on Fire.

Q. Do you know, that ſhe ſet it on Fire?

A. It was ſaid, ſhe did.

Q. How near was the *Eſſex* to you, when you was wearing?

A. When I ſaw her, when we were wearing, ſhe was about a Cable's Length from us.

Q. What Sail had you ſet?

A. I can't tell: — If the Sprit-ſail was ſet on Fire, it muſt have been at the time of Wearing; for, I am ſure, it was not before.

Q. Why not before?

A. Becauſe we were at too great a Diſtance from the *Eſſex*.

Q. Is it poſſible, that it ſhould be on Fire, and you not take notice of it?

A. I heard it was; but I did not ſee it.

Priſoner aſked,

Q. How long have you been Mate of the *Rupert?*

A. About Four Years.

Q. What Religion are you of?

A. I am a Proteſtant.

Q. What are your Family and Friends?

A. I am related to General *Sabine*.

Q. Do you remember what Sail the *Real* engaged under?

A. Her Foreſail and Topſails.

Court asked,

Q. Was her Foreſail ſet?

A. Yes.

Priſoner asked,

Q. Did, or did not, the *Marlborough*'s and *Namur*'s Preſſing upon her make her bear away more and more, larger and larger?

A. She engaged all the Day large.

Q. What Diſtance was I from the *Marlborough*, when the Admiral hauled off?

A. About Two Miles.

Q. What did occaſion my being ſo far from the *Marlborough* then?

A. Endeavouring to get to thoſe Ships aſtern.

Q. How did thoſe Ships get upon our Beam? Was it by their making Sail to my Length, or by Bearing away, and my Edging after them?

A. It was by their Bearing away, and your Edging after them.

Q. If we had lain ſtill where we were, and they had kept the Courſe they were firſt coming up, how near would they have fetched to us?

A. They would have fetched us.

Q. Did you perceive, whether they were intire Broadſides, or only ſome looſe Shot, that were fired from thoſe Ships, and went over us?

A. They were intire Broadſides.

Q. Did you ſee any Shot fall over the Ship?

A. No.

Q. Did you ſee any fall ſhort?

A. I did not ſee any Shot fall either ſhort, or over.

Then he withdrew.

The Priſoner then applied to the Court to know, if they would indulge him ſo far, as to give him Leave to ſummon Admiral *Leſtock* to his Tryal; of whom, he ſaid, he ſhould have Occaſion to aſk ſome Queſtions.

The Court told him,

That, as the like had been refuſed with regard to Admiral *Mathews*, it could not be allowed with reſpect to Mr. *Leſtock*.

The Priſoner then ſaid,

That, if the Court thought it proper, he would bring Perſons to ſpeak to the Character of his Witneſſes.

He was told, That their being Officers was ſufficient; and that there could be no Occaſion to call any body to their Character.

Then the Court adjourned till To-morrow Morning, Nine o'Clock.

The Eighth Day upon Captain AMBROSE'S *TRYAL,*

On Board His MAJESTY'S *Ship the* London, *at* Chatham,

TUESDAY, 29th *October*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, as were Yeſterday.

The Marſhal brought in the Priſoner.

One of the Members propoſed to the Court, That Captain *Ambroſe* might be acquainted, That, notwithſtanding the Evidence for the Crown was all gone through, he might be at Liberty to recall the Witneſſes, and to aſk them any Queſtions, of the ſame Nature and Tendency with thoſe which were allowed Yeſterday to be aſked the Witneſſes in his Behalf, at the Deſire of the Proſecutors for the Crown: And the ſame was unanimouſly agreed to by the Court; and the Priſoner accordingly acquainted therewith: But the Proſecutor for the Crown obſerving to the Court, That Captain *Nucella* had the Court's Leave to go to *London*; and deſiring, that he might be excepted in that general Reſolution; the Court agreed, That he ſhould be excepted accordingly.

Then the Witneſſes were ordered to be called in.

John Goodyer, Foremaſtman on board the *Rupert*, called in, and ſworn.

His Depoſition was read, as follows:

John Goodyer, *belonging to his Majeſty's Ship the* Rupert, *at the time of the late Engagement in the* Mediterranean, *between his Majeſty's Fleet, and the Combined Fleet of* France *and* Spain, *on the* 11*th of* February, 1743. *maketh Oath*;

THAT, when Admiral *Mathews* made the Signal for the Line of Battle ahead, in the Morning of the aforeſaid Day, the *Rupert* got into the Line, and continued in it; and did not, during any time while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorſetſhire* and *Eſſex* were ſtationed between the *Marlborough* and *Rupert*, and were to Windward of the *Rupert*, and began to fire quickly after the Admiral.

That the *Rupert* bore down at the ſame time the Admiral did, and brought to in the Line; and juſt after ſhe brought to, the *Real*'s Second aſtern bore away before the Wind; upon which the *Rupert* ſtood after her: Whereupon ſhe ran cloſe under the *Spaniſh* Admiral's Lee-Quarter; and then the *Rupert* brought to again, and lay with Topſails aback, to wait for the Five *Spaniſh* Ships aſtern, that were coming up, which were then about Four or Five Miles diſtant, and did not get up with the *Rupert* till about Three o'Clock; and then ſhe began to fire at them; but not till ſome time after they had fired at her.

That it was not poſſible for the *Rupert* to get near enough to the *Real*, and her Second, to do Execution, without being between Two Fires, and breaking the Line; becauſe ſhe muſt have gone between the *Dorſetſhire* and *Eſſex*, and the *Spaniſh* Admiral's Second, and been expoſed to their Fire.

That a few Guns were at firſt fired from the *Rupert*, at too great a Diſtance; but, when Captain *Ambroſe* obſerved they did not reach the Enemy, he ordered Firing to ceaſe, as he has heard; and afterwards cauſed Two or Three Guns to be fired at a Diſtance of Time from each other; and, when he found the Shot would well reach the Enemy, he ordered Firing to be continued; though the Enemy had fired ſome time at the *Rupert*, and their Shot went far over her, before ſhe began to fire at all.

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering for their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their Firſt Courſe, they muſt have been cloſe along-ſide the *Rupert*.

That the *Rupert* engaged the Headmoſt and Second of the Five ſternmoſt Ships of the Enemy, about the time the *Marlborough*'s Maſts fell, the Headmoſt of thoſe Ships being then come up within about point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down to the *Real*.

That, when the Fireſhip blew up, ſhe was not above Half a Mile diſtant from the *Rupert*, and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, the Admiral wore to the Northward: Upon which the *Rupert* ceaſed Firing, hauled her Wind, and paſſed to Windward of the Admiral and *Dorſetſhire*, and wore round after the *Dorſetſhire*; and was then again engaged with the *Spaniſh* Ships, in paſſing by them.

That this Deponent did not ſee any Signal of Diſtreſs made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement; nor did he hear the *Rupert* hailed from the *Royal Oak*, during the Engagement.

That, to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement,

acted agreeable to the Naval Inſtructions and Diſcipline; and behaved with Conduct and Courage; and ſeveral times expreſſed his Uneaſineſs, that the Enemy's Five Ships were ſo long coming up.

John Goodyer.

Sworn before me, this 20th Day of *September*, 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. In the Fore-top.

Q. Did you bear down with the Admiral?

A. Yes.

Q. Where was you, when the Admiral began to engage?

A. We were about a Quarter of an Hour after the Admiral brought up, before we got into a Line with him: Upon his Bearing away, we ſet our Foreſail, and hoiſted our Top-gallant-ſails, and bore down, till we got into a Line with the Admiral; and then brought up, and took in our Top-gallant-ſails, and hauled up our Foreſail.

Q. What time was that?

A. It was about One o'Clock.

Q. How ſoon was it after the Admiral began to fire?

A. I believe, the Admiral might have fired Two Broadſides.

Q. What Ships were then between the Admiral and *Rupert*, in a Line?

A. Never a one; the *Marlborough* was nigheſt in a Line, but a little to Leeward of the Admiral: The *Dorſetſhire* was about a Point upon our Weather-Bow, and the *Eſſex* about Two Points upon our Weather-Bow, and a Quarter of a Mile diſtant.

Q. What Diſtance was the *Dorſetſhire* from you?

A. About Three-quarters of a Mile, or hardly ſo much.

Q. How long did you lie in that Poſition?

A. About a Quarter of an Hour, or rather more.

Q. Did the *Dorſetſhire* and *Eſſex* keep that Station, and not come into the Line?

A. They did, and were firing at that Diſtance.

Q. You ſay, The *Dorſetſhire* and *Eſſex* kept that Station?

A. Yes, I never ſaw them alter it.

Q. What did you do afterwards?

A. The *Real*'s Second, about a Quarter of an Hour afterwards, was bearing away before the Wind; upon which we ſet our Foreſail, and were going to bear away after her; and, when ſhe obſerved us doing ſo, ſhe hauled her Wind again, and run under the *Real*'s Quarter; we then hauled up our Foreſail again, and laid our Head the ſame Way with the Admiral.

Q. You ſay in your Depoſition, That the Reaſon you did not run ahead, and cloſe with the *Marlborough*, and engage the *Hercules*, was, becauſe you muſt have run through the Fire of the *Dorſetſhire* and *Eſſex*?

A. Yes; we could not do it otherwiſe.

Q. Do you think, they would not have left off Firing, upon your ſhooting ahead?

A. I can't tell, whether they would or no.

Q. Is that the Reaſon you did not go and attack the *Real*'s Second?

A. The *Hercules* ran under the *Real*'s Quarter.

Q. What Ships did the *Dorſetſhire* and *Eſſex* fire at?

A. The *Hercules*.

Q. Could you not have fired at the *Hercules* too?

A. No; we muſt have run to Leeward of the *Real*, and her too, if we had.

Q. Which, do you think, was moſt for the Service, For you to lie where you did, waiting for the Five Ships to come up, or to ſhoot ahead, and engage a Ship, where there were Two Ships engaging one?

A. It was out of our Power, when the *Real*'s Second ran under the *Real*'s Quarter: We could not have done it in any caſe, as I could ſee.

Q. Were the Two Ships, engaging the *Hercules*, within point-blank Shot of her?

A. No; I believe not.

Court. Why then, What was the Uſe of their engaging her?

Q. What did you do after bringing up the Second time?

A. We lay to about a Quarter of an Hour inactive; and the Captain ſeem'd to be very uneaſy, as I looked over the Rail from the Top, that he had nothing to engage; and ordered the Helm to be ſhifted, as I preſumed, becauſe I ſaw the Ship bear away: I can't tell, what Words the Captain expreſſed; but I ſaw him wring his Hands; which I never ſaw before: The Ship bore away about Half an Hour, till we run down Three-quarters of a Mile, or more, into the Track of the *Spaniſh* Ships coming up; and then we brought to, with our Topſails aback.

Q. How long was it before you began to fire, after you firſt hauled up in a Line with the Admiral?

A. I believe, about an Hour and an Half, or Two Hours.

Q. Did you ſee the *Marlborough*'s Maſts go away?

A. No; I did not ſee them fall.

Q. Did you ſee her, after they were gone?

A. I ſaw her towed out ahead of us.

Q. Did you take any notice of your Spritſail's being on Fire?

A. No; I heard afterwards it was; but I did not ſee it.

Q. You muſt have a Regard to what you ſay.

A. I did not take any notice of it then.

Q. What, did you hear, was the Cauſe of its being on Fire?

A. I did not hear the Cauſe; I never inquired after it.

Q. Was you within Point blank, when you engaged the Enemy?

A. Yes.

A. Yes.

Q. What Diſtance was you? How many Cables Length?

A. I believe, about Four Cables Length, or hardly ſo much, when we engaged.

Q. Was you nearer than that, before you wore?

A. Yes; I believe, we were within about Two Cables Length, and a Half.

Q. How long did you engage ſo near?

A. About an Hour, or an Hour and an Half, from the Firſt time of our Firing, at Four Cables Length, to the End of it.

Q. I ſuppoſe you had a great deal of Rigging cut, and a good many Men killed and wounded, in firing ſo long, and ſo near?

A. No Men killed, I thank God; I don't know, that any were wounded, before we wore.

Q. What Rigging had you ſhot?

A. We had Two of the Foretop-maſt-ſhrouds cut, the Fore-ſpring-ſtay, the Jib-ſtay and Halliards, Two of the Fore-ſhrouds, the Bob-ſtay, the Stopper of the ſpare Anchor, one of the Bowſprit Starboard-ſhrouds, the Main Preventer-Braces, the Fore-top-gallant-Braces both ſhot.

Q. Was this before you bore away?

A. Yes; all before we bore away.

Q. Did any other *Britiſh* Man of War engage thoſe Ships, at the ſame time the *Rupert* did?

A. Yes; the *Royal Oak* did.

Q. Did your Maſts or Yards receive any Damage?

A. I ſaw none.

Q. How was her Hull?

A. There were Three or Four Shot in the Hull, on the Starboard-ſide; but, I believe, that was done before the Enemy came up with us; I believe, they were received, before we came near enough to engage.

Q. What Part of the Ship were they in?

A. I can't tell; I only heard the Carpenter ſay ſo.

Q. How do you know, it was before engaging the Five Ships?

A. Becauſe, if it had been done then, the Shot which went a great way over us, if they had ſtruck us, muſt have gone through us.

Q. But you are ſure the Rigging was ſhot away?

A. Yes; and, if thoſe Shot had hit the Hull at the ſame time, they muſt have gone through the Ship, if ſhe had been made of Iron.

Q. Had you any Men killed?

A. We had no Men killed.

Q. Had you any wounded?

A. We had ſome wounded; but I can't tell how many, nor when they were wounded.

Q. Did any other Ship engage thoſe Five Ships, before you did?

A. The *Royal Oak* did.

Q. How was ſhe then from you?

A. About Two Cables Length diſtant, and a Point upon our Weather-Quarter, when ſhe began to engage.

Q. How was ſhe, when you engaged the neareſt?

A. About Two Points upon our Weather-Quarter, and Two Cables Length diſtant.

Q. Did that Alteration happen by your Bearing down, or her Luffing up?

A. I believe, by her Luffing.

Q. Was you lying to, or under Sail?

A. We were yawing the Ship.

Q. Do you believe, the Yawing your Ship might occaſion her to be ſo broad upon your Quarter?

A. I believe it might.

Q. Suppoſe you had not yawed your Ship, but kept your Head as the Admiral did, How muſt the *Royal Oak* have been then?

A. She muſt have been a Point upon our Quarter, as ſhe was before we bore down.

Q. What Diſtance was the *Royal Oak* from you, when you hailed one another?

A. I don't remember any thing, either of our hailing her, or of her hailing us.

Q. When you firſt brought to, was you any way diſabled, to prevent your cloſing with the *Marlborough?*

A. No; we were not.

Q. Before you began to yaw, was you under Sail, or lying by?

A. We had run down before under our Foreſail, and Three Topſails: As ſoon as we brought the Ship to, we began to yaw.

Q. How did you lie, juſt before you began to yaw?

A. We had our Topſails aback, before we began to yaw.

Q. Were your Topſails aback, before you began to yaw?

A. Yes; when we began.

Q. What did you do, when you brought to?

A. We yawed from one Side to the other, to let the Enemy come up with us.

Q. You bore down into the Track of thoſe Five Ships: What did you do then?

A. We brought our Ship to the Wind.

Q. And then you began to yaw?

A Member obſerved this to be the very Act of Yawing: He has been asked this over and over again; and has anſwered in the ſame manner.

Q. What did you do, when you got into the Track of the Five Ships?

A. We immediately brought our Ship up in the Wind, and laid our Topſails aback.

Q. Did you continue engaging the Two Headmoſt of thoſe Five Ships cloſely, after they came up, till you wore?

A. When they came up, we filled our Sails again, and kept jogging on with them, edging towards them; and, after we fired one Broadſide, they edged away.

Q. From

Q. From the time thoſe *Spaniſh* Ships came up, after you got into their Track, and began to engage, Did you leave off Firing before Night; or did you continue it?

A. At firſt, we were not within Gun-ſhot of them.

Q. From the time you began to engage cloſely, Did you continue Firing, till you wore, in the Evening?

A. Yes, we did.

Q. When the *Rupert* wore in the Evening, where was the *Eſſex* then?

A. I did not take notice; I never ſaw her then.

Q. You ſay, when you firſt brought up, you was in a Line with the Admiral, and the *Marlborough* was to Leeward of the Admiral?

A. Yes.

Q. And you ſay, the *Spaniſh* Admiral's Second bore away before the Wind, and you bore away after her?

A. Yes.

Q. How did the *Hercules* bear, before you bore away after her, when your Head lay with the Admiral's?

A. She was before our Beam a great way: She was about Two or Three Points upon our Bow.

Q. And you then in the Foretop?

A. Yes.

Q. Then you muſt ſee through the Fore-top-ſail?

A. No; I was ſometimes upon the Fore-yard.

Q. And was you in the Fore-top, or upon the Fore-yard?

A. I was upon the Fore-yard at that time.

Q. Did you apprehend, that Captain *Rentone* aſked you, Whether you was in the Fore-top at that time, when you ſaw the *Hercules* Three Points on your Weather-Bow; or, that you was quartered in the Fore-top?

A. I underſtood, that he meant, Whether I was quartered in the Fore-top.

Q. You ſay, the *Hercules* was Three Points upon your Lee-Bow?

A. Yes.

Q. When was it?

A. When we firſt brought to, in a Line with the Admiral.

Q. At what time was that?

A. About One o'Clock, or ſomething after.

Q. You ſay, You came down out of the Fore-top, upon the Fore-yard?

A. Yes.

Q. What did you come down for?

A. I was curious to look about the Rigging.

Q. Did you ſee the *Hercules* from the Fore-yard?

A. Yes.

Q. What did you ſay you came down from the Fore-top upon the Fore-yard for?

A. I was curious to look about me.

Q. You ſay, You ſaw the *Hercules* from the Fore-yard: How was ſhe then, and at what Diſtance?

A. Three Points upon the Bow, and about a Mile diſtant.

Q. Were your Sails then full, or aback?

A. They were full.

Q. I think you ſaid juſt now, There was a great deal of your Rigging ſhot away?

A. It was after that, a great while.

Q. When you went out of the Fore-top upon the Fore-yard, What Part of the Yard was you upon, when you ſaw the *Hercules* Three Points upon your Bow?

A. Upon the Quarter of the Yard, by the Lee-Buntline.

Q. Was you upon the Horſe, or the Yard?

A. I ſat upon the Yard.

Q. How was the Yard then?

A. It was braced up, and the Topſail full.

Q. Was your Topſail hoiſted up?

A. Yes.

Q. Never a Reef in it?

A. No.

Q. Was there Wind enough to blow the Foot of the Top-ſail clear of the Top-brim, for a Conſtancy?

A. Yes, there was.

Q. Was the *Royal Oak* never to Leeward of you?

A. No, never.

Q. Was ſhe ever to Windward?

A. Yes.

The Queſtions from the Proſecutors for the Crown were asked; *viz.*

Q. When the Admiral ſtood to the Northward, on the Starboard-tack, after Wearing, in the Evening, What Station was the *Rupert* in? Was ſhe the Firſt, Second, or Third Ship ahead, or aſtern of the Admiral?

A. I can't tell; I did not ſee the Admiral, till he got clear of the Leech of our Foreſail; for I was buſy in mending the Rigging;—The *Rupert* was aſtern of the Admiral.

Q. What Ships were between the Admiral and *Rupert*, upon the Starboard-tack, in the Evening?

A. I can't tell; I did not take any Notice.

Q. What Ship was next ahead, and what Ship next aſtern, of you then?

A. I did not take notice of any Ship then.

Q. Did the *Rupert* receive any, and how many, Shot in her Hull and Maſts, in that Day's Action?

A. I can't tell how many: There was one Shot ſtruck the Hull on the Larboard-ſide, and went through the Ship's Side, and carried off Two Trucks from one of the Carriages.

Q. Did it go through both Sides?

A. No; I believe, not.

Q. Did you paſs to Windward, or to Leeward, of the *Marlborough*?

A. We paſſed to Leeward of her: She was towed off ahead of us.

Q. Did any other Ship paſs to Leeward of the *Marlborough?*

A. I don't know.

Court aſked,

Q. What time of the Day was it, when the *Rupert*'s Spritſail was on Fire?

A. I don't know; I only heard it afterwards; but I did not hear it was on fire at that time.

Q. Did you never hear it till after?

A. No.

Q. What Ship was the *Eſſex* engaged with, when your Spritſail was ſaid to be on Fire?

A. The *Hercules*, I believe.

Q. When was the *Rupert*'s Spritſail ſet on Fire?

A. I can't ſay.

Q. Do you remember any thing of your Spritſail being burnt; for, as you was Captain of the Forecaſtle, you muſt know it?

A. I can't ſay;— there were Holes in it.

Q. Do you know of the Spritſail being unbent?

A. Yes; it was unbent next Day.

Q. Was it burnt?

A. The Sailmaker is the beſt Judge of that.

Q. Did you hear the Clauſe of the Act of Parliament againſt Perjury read?

A. Yes.

Q. Do you know, what an Oath is?

A. Yes; I will ſpeak nothing but the Truth; I would not forſwear myſelf for the World.

Q. As you are upon your Oath, and know the Spritſail was unbent, Was it burnt or not?

A. Yes, I am ſure, it was burnt; but I did not know it then: You aſked me, Whether I ſaw it, when it was burnt; and I ſaid, I did not.

Q. When the Spritſail was unbent, Did it appear to be burnt?

A. There were Holes in it; I can't ſay it was burnt.

Q. Recollect yourſelf, whether it was not burnt?

A. Yes, it was burnt; my Meaning was, I did not know, how it came to be burnt.

Q. When was the Spritſail unbent?

A. It was unbent the next Day.

Q. Upon the Oath you have taken, Did you ever hear any body on board your Ship ſay, From what Ship your Spritſail was ſet on fire?

A. No, I never did.

Q. Can you remember, that your Chace-Guns were ever fired?

A. I did not take notice what Guns were fired.—I know they kept conſtantly firing at the Enemy; but I did not obſerve the Guns.

Priſoner. I think the Court have aſked this Witneſs all the Queſtions I deſire to aſk.

Then the Witneſs withdrew.

Priſoner. I deſire the Court will indulge me in acquainting them, That, when I bore away for thoſe Five Sail, the *Real* was very much diſabled, her Main-yard was down athwart her Gunnel, her Foreſail in Ten thouſand Pieces, her Topſail ſhot to Pieces, her Main-topmaſt Yard was down; and I as much expected, that ſhe and the *Hercules* would be taken in a Quarter of an Hour, as that God is in Heaven; and that was the Reaſon of my going to the other Ships, that I might have Part of the Honour of the Glory of the Day.—I only offer this to the Court, as it has eſcaped my Memory ſo long; and deſire the Queſtion may be aſked the Witneſſes.

The Court told him,

That he might aſk that of his Witneſſes upon their Examinations, or urge it in his Defence.

Richard Brimridge, Sailmaker, on board the *Rupert*, was called in, and ſworn.

His Depoſition was read, as follows:

Richard Brimridge, *Sailmaker, on board his Majeſty's Ship the* Rupert, *at the time of the late Engagement in the* Mediterranean, *between his Majeſty's Fleet, and the Combined Fleet of* France *and* Spain, *on the* 11*th* February, 1743. *maketh Oath*;

THAT, when Admiral *Mathews* made the Signal for the Line of Battle ahead, in the Morning of the aforeſaid Day, the *Rupert* got into the Line, and continued in it; and did not, during any time while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorſetſhire* and *Eſſex* were ſtationed between the *Marlborough* and *Rupert*; and were to Windward of the *Rupert*; and began to fire quickly after the Admiral.

That the *Rupert* bore down at the ſame time the Admiral did, and brought to in the Line; and, juſt after ſhe brought to, the *Real*'s Second aſtern bore away before the Wind: Upon which the *Rupert* ſtood after her: Whereupon ſhe run cloſe under the *Spaniſh* Admiral's Lee-Quarter; and then the *Rupert* brought to again, and lay with Topſails aback, to wait for the Five *Spaniſh* Ships aſtern, that were coming up, which was then about Four or Five Miles diſtant; and did not get up with the *Rupert* till about Three o'Clock; and then ſhe began to fire at them, but not till ſome time after they had fired at her.

That it was not poſſible for the *Rupert* to get near enough to the *Real*, and her Second, to do Execution, without being between Two Fires, and breaking the Line; becauſe ſhe muſt have gone between the *Dorſetſhire* and *Eſſex*, and the *Spaniſh* Admiral's Second, and been expoſed to their Fire.

That a few Guns were, at firſt, fired from the *Rupert*, at too great a Diſtance; but, when Captain *Ambroſe* obſerved they did not reach the Enemy, he ordered Firing to ceaſe; and afterwards cauſed Two or Three Guns to be fired at a Diſtance of Time from each other; and, when he found the Shot would well reach the Enemy,

Enemy, he ordered Firing to be continued; though the Enemy had fired ſome time at the *Rupert*, and their Shot went far over her, before ſhe began to fire at all.

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering for their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their firſt Courſe, they muſt have been cloſe along-ſide the *Rupert*.

That the *Rupert* engaged the Headmoſt and Second Ships of the Five *Spaniſh* Ships aſtern; and that the *Marlborough*'s Maſts fell at Half an Hour paſt Three in the Afternoon; the Headmoſt of thoſe Ships being then come up within about point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down to the *Real*; and that the Fireſhip was deſtroyed without Effect.

That, when the Fireſhip blew up, ſhe was not above Half a Mile diſtant from the *Rupert*, and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, the Admiral wore to the Northward: Upon which the *Rupert* ceaſed Firing, hauled her Wind, and paſſed to Windward of the Admiral and *Dorſetſhire*, and wore round after the *Dorſetſhire*; and was then again engaged with the *Spaniſh* Ships, in paſſing by them.

That this Deponent did not ſee any Signal of Diſtreſs made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement; nor did he hear the *Rupert* hailed, from the *Royal Oak*, during the Engagement.

That, to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement, acted agreeable to the Naval Inſtructions and Diſcipline; and behaved with Conduct and Courage; and ſeveral times expreſſed his Uneaſineſs, that the Enemy's Five Ships were ſo long coming up.

Richard Brimridge.

Sworn before me, this 20th
Day of *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Forecaſtle.

Q. How long was it, after the Admiral began to engage, before the *Rupert* was in the Line?

A. About a Quarter of an Hour.

Q. In your Depoſition you ſay, You ſaw the *Hercules* bear away upon your coming into the Line.

A. She bore away after the Fire of the *Namur*, *Marlborough*, *Dorſetſhire*, and *Eſſex*; juſt after they fired, ſhe bore away.

Q. Did ſhe continue Bearing away?

A. When we ſaw her bearing down for the Five Ships, we let fall our Foreſail, and hoiſted our Fore-ſtayſail, and bore away after her, to cut her off: Upon which ſhe came round again, hauled her Wind, and got under her Admiral's Quarter.

Q. What did you do then?

A. We hauled our Foreſail up, and hauled down the Stayſail, and brought to the Wind again.

Q. How long did you lie ſo?

A. About a Quarter of an Hour.

Q. What did you do after that?

A. We over-hauled our Buntlines and Leech-lines of the Foreſail, and hoiſted our Fore-ſtayſail, and bore down into the Track of the Five Ships coming up.

Q. Where was the *Royal Oak* then?

A. Upon our Larboard-Quarter.

Q. What Diſtance upon your Quarter?

A. About Two Cables Length, and aſtern withal.

Q. What Ship began firſt to fire, you, or the *Royal Oak?*

A. The *Royal Oak.*

Q. I ſuppoſe ſhe was neareſt the Enemy.

A. Yes, to be ſure, as ſhe was aſtern.

Q. How long did the *Royal Oak* engage before the *Rupert?*

A. Some little time; I can't be particular.

Q. Was it a Quarter of an Hour?

A. It might be thereabout.

Q. Was it Half an Hour?

A. No, not ſo long.

Q. You ſay, ſhe was right aſtern.

A. No, I don't ſay ſo; ſhe was aſtern, and to Windward withal.

Q. How long was it before you engaged, from the time of your firſt Hauling up into a Line with the Admiral?

A. About Two Hours.

Q. Did you ſee the *Marlborough*, when her Maſts went away?

A. Yes.

Q. What was you doing then?

A. We were engaging the Headmoſt of the Five Sail.

Q. Are you ſure you was engaging then?

A. Yes, I am ſure of it.

Q. At what Diſtance was you then engaging the Enemy?

A. About Three or Four Cables Length.

Q. When the *Marlborough* loſt her Maſts, What Ships were engaging the *Real* and *Hercules?*

A. I did not obſerve; for we were then engaging ourſelves.

Q. Don't you think it would have been more for the Service, for you to have run up to the Aſſiſtance of the *Marlborough*, as you was then engaging, at Four Cables Length Diſtance?

A. We were then engaged, and could not go to her Aſſiſtance.

Q. What

Q. What Diſtance was you then from the *Marlborough?*

A. About a Mile.

Q. You ſay you was engaged then?

A. Yes.

Q. At what Diſtance?

A. About Three or Four Cables Length.

Q. At your ſecond Bearing down, What Wind had you?

A. Not a great deal of Wind.

Q. How many Knots might you go?

A. I believe, we might go about a Knot, or a Knot and an Half.

Q. How long did you continue Bearing down, before you brought up, in the Track of thoſe Five *Spaniſh* Ships?

A. I really don't know; I can't ſay to any particular Time.

Q. Can you gueſs at no Time?

A. No.

Q. You are upon your Oath.

A. I am ſenſible I am.

Q. What Time was it when you fired your Larboard Guns?

A. Between Three and Four o'Clock.

Q. You ſay, You was quartered upon the Forecaſtle; in your Bringing to, to fire thoſe Larboard-Guns, Did you ſee the *Royal Oak?*

A. Yes.

Q. Where was ſhe, when you fired thoſe Guns?

A. Upon the Bow.

Q. How near upon the Bow?

A. About Two Points upon our Larboard-Bow.

Q. How far off?

A. Really I don't know the Diſtance; for I was buſy employed in getting my Guns over from the Starboard to the Larboard-ſide.

Q. You was quartered at one of the Forcaſtle-Guns?

A. I was at both.

Q. When you fired thoſe Larboard-Guns upon the Enemy, Did your Carriages remain ſquare? Or how were they breeched?

A. We breeched them forwards.

Q. How much were they breeched forwards?

A. As much as the Ports would allow them; for the Ships were abaft the Beam.

Q. When you obſerved the *Royal Oak* firſt engaging, How was the *Royal Oak* with regard to your Ship?

A. Upon our Larboard-Quarter, and aſtern withal.

Q. Was you under Sail, or lying by, when you obſerved her firſt to fire?

A. We were under our Topſails.

Q. Were they full, or aback?

A. They were full.

Q. How long did you continue under Sail, with your Topſails full, before you yawed your Ship?

A. I can't tell.

Q. How had you the Wind, when you was going with your Topſails full?

A. The Wind was abaft the Beam.

Q. How much abaft?

A. Not a great Way.

Q. What do you judge? Was it a Point, or Two Points?

A. I could not tell exactly; for I could not ſee a Compaſs.

Q. How long have you been at Sea?

A. Nine Years.

Q. In what Ships?

A. I ſailed with Captain *Smith* in the *Succeſs*; I was in the *Devonſhire*, *Greyhound*, and *Rupert*.

Q. As you was quartered upon the Forecaſtle, Did you ever fire your Chace-Gun, as a Chace-Gun?

A. No.

Q. Do you remember any thing of your Spritſail being on Fire?

A. Yes; the Spritſail was on Fire.

Q. What Ship was it ſet on Fire by?

A. It muſt have been by the *Eſſex*.

Q. At what time of the Day was it?

A. Between Four and Five o'Clock; at the Time of the Admiral's Wearing.

Q. Had you left off Engaging then?

A. Yes, juſt at that Time, to let the Admiral paſs by us.

Q. How do you apprehend it was ſet on Fire?

A. By her Wads, to be ſure; it could be nothing elſe.

Q. What Ship was the *Eſſex* engaged with, when ſhe ſet your Spritſail on Fire?

A. I can't tell; for we were getting our Fore-tack on board, to ſtretch away ahead of the Admiral, to give him room; and then we wore round under the *Dorſetſhire*'s Stern.

Q. You ſay, You ſtretched ahead of the Admiral: Did you go to Windward, or to Leeward?

A. We ſtretched out to Windward of the Admiral, and went to Leeward of the *Marlborough*, and wore round under the *Dorſetſhire*'s Stern.

Q. Was your Spritſail fired by the *Eſſex*, before or after you wore?

A. It was at the time of Wearing.

Q. Was it at the time of your Wearing, or the Admiral's Wearing?

A. At the time of the Admiral's Wearing.

Q. When did you unbend your Topſails, after that Day's Engagement?

A. The next Day.

Q. Conſider, you are upon your Oath: Which of them did you unbend?

A. Both the Fore and Main Topſails.

Q. Where did you repair them? Was it upon the Tops, or upon Deck?

A. Upon Deck: The Holes were ſtopped; but, not being found ſerviceable, we bent new Sails.

Q. What Number of Shot-holes had you in the Sails?

A. Between Forty and Fifty, in the Fore and Main Courſes, and Fore and Main Topſails: There were a vaſt many Shot in the Topſails.

Q. Do you think you received moſt of thoſe Shot, before you wore?

A. We received a great many, before we wore; for I looked up ſeveral times, and ſaw many Shot-holes in the Sails.

Then the Queſtions from the Proſecutors for the Crown were asked; *viz.*

Q. When the Admiral ſtood to the Northward, on the Starboard-tack, after Wearing, in the Evening, What Station was the *Rupert* in? Was ſhe the Firſt, Second, or Third Ship ahead or aſtern of the Admiral?

A. She was the Second Ship aſtern of the Admiral, and the next aſtern of the *Dorſetſhire:* The *Dorſetſhire* was between her and the Admiral.

Q. What Ship was next aſtern of the *Rupert?*

A. I can't tell: I never looked aft, to mind what Ships were aſtern.

Q. Did the *Rupert* receive any, and how many Shot, in her Hull and Maſts, in that whole Day's Action?

A. None in the Maſts, but we had ſeveral in the Hull.

Q. Do you know how many were in the Hull?

A. I can't tell how many.

Q. How many were on one Side, and how many on the other?

A. I can't ſay.

Q. How many were there before, and how many after Wearing?

A. I can't ſay.

Q. Did the Admiral, and his Diviſion, in ſtanding to the Northward, after Wearing, paſs to Windward, or to Leeward, of the *Marlborough?*

A. To Leeward.

Q. What Ships paſſed to Leeward of the *Marlborough?*

A. The Admiral, *Dorſetſhire*, and we, paſſed to Leeward of her: I can't tell what other Ships did.

Q. Do you know whether any Ships paſſed to Windward of her?

A. I can't ſay.

Priſoner aſked,

Q. Do you think there were any Grape-ſhot went through our Topſails?

A. Yes, there were ſome through our Forecourſe.

Q. How do you know them to be Grape-ſhot?

A. By the Smalneſs of the Holes: There were ſome went through the Seams; they could not be large Shot; if they had, they would have ſplit the Sails.

Q. Were they received before or after Wearing?

A. I can't tell.

Q. The Enemy's Shot that came over us, Were they Broadſides, or only ſingle ſcattering Shot?

A. When we came within Point-blank, they were whole Broadſides.

Q. Did you ſee any of the Shot drop over us, on the other Side?

A. Yes.

Q. How far do you think they went over us?

A. To be ſure, as far again as we were from the Enemy.

Q. Do you, or do you not, think, if thoſe Shot, that went over us, had ſtruck the Hull, that they muſt have gone through both Sides?

A. Yes, to be ſure, they muſt have gone through both Sides, if they had ſtruck the Hull.

Q. At the time that Shot was fired from the *Eſſex*, and the Wadding fell into our Sprit-ſail, Had the Admiral then paſſed us?

A. Yes; he was upon our Starboard-Quarter.

Q. Can you recollect, when we bore away, What Damage the *Real* had received? Or had ſhe received any?

A. She was a very great Wreck.

Q. Explain how ſhe was.

A. Her Main-yard was ſhot away; her Topſail-yards down upon the Cap; and her Foreyard fell to the Slings; her Foreſail flying in Rags, all ſhot to-pieces.—This was when we wore, and paſſed her.

Q. You miſunderſtand my Queſtion: Do you remember, when we bore away into the Track of the Five *Spaniſh* Ships coming up, in order to attack the Headmoſt of them, What Condition was the *Real* then in?

A. Juſt as we went down into their Track, her Main-yard was ſhot away then, and was Half over the Starboard, and Half over the Larboard-ſide; the Topſail-yard down upon the Cap; and her Mizen-yard ſhot down.

Q. Which, do you think, was more for the Advantage and Glory of the Day, for us to have gone and attacked the *Hercules*, or to go to attack the Five Ships coming up?

A. I think it was more for the Benefit of the Service, to go and attack the Headmoſt of the Five Sail, than to have gone to attack the *Hercules.*

Court aſked,

Q. You ſay, when you bore down into the Track of thoſe Five Ships, that the *Real*'s Main-yard was down, Half on one Side, and Half on the other; Were the *Marlborough*'s Maſts gone then?

A. I believe, it was before the *Marlborough*'s Maſts were gone; but I can't be certain; it was much about the ſame time.

Then he withdrew.

Robert Langton, Midſhipman on board the *Rupert*, was called in, and ſworn.

His Depoſition was read, as follows:

Robert Langton, *late Midſhipman of his Majeſty's Ship the* Rupert, *at the Time of the late Engagement in the* Mediterranean, *between his*

Majeſty's Fleet, and the Combined Fleet of France *and* Spain, *on the* 11*th* February, 1743. *maketh Oath*;

THAT, when Admiral *Mathews* made the Signal for the Line of Battle ahead, in the Morning of the aforeſaid Day, the *Rupert* got in the Line, and continued in it; and did not, during any time while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorſetſhire* and *Eſſex* were ſtationed between the *Marlborough* and *Rupert*, and were to Windward of the *Rupert*, and began to fire quickly after the Admiral.

That the *Rupert* bore down at the ſame time the Admiral did, and brought to in the Line; and, juſt after ſhe brought to, the *Real*'s Second aſtern bore away before the Wind; upon which the *Rupert* ſtood after her; whereupon ſhe ran cloſe under the *Spaniſh* Admiral's Lee-Quarter; and then the *Rupert* brought to again, and lay with Topſails aback, to wait for the Five *Spaniſh* Ships aſtern, that were coming up, which were then about Four or Five Miles diſtant, and did not get up with the *Rupert* till about Three o'Clock; and then ſhe began to fire at them, but not till ſome time after they had fired at her.

That it was not poſſible for the *Rupert* to get near enough to the *Real*, and her Second, to do Execution, without being between Two Fires, and breaking the Line, becauſe ſhe muſt have gone between the *Dorſetſhire* and *Eſſex*, and the *Spaniſh* Admiral's Second, and been expoſed to their Fire.

That a few Guns were at firſt fired from the *Rupert*, at too great a Diſtance; but, when Captain *Ambroſe* obſerved they did not reach the Enemy, he ordered Firing to ceaſe; and afterwards cauſed Two or Three Guns to be fired at a Diſtance of Time from each other; and, when he found the Shot would well reach the Enemy, he ordered Firing to be continued; though the Enemy had fired ſome time at the *Rupert*, and their Shot went far over her, before ſhe began to fire at all.

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering for their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their Firſt Courſe, they muſt have been cloſe along-ſide the *Rupert*.

That the *Rupert* engaged the Headmoſt, and her Second, of the Five ſternmoſt Ships of the Enemy, about the time the *Marlborough*'s Maſts fell, the Headmoſt of theſe Ships being then come up within about point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down to the *Real*.

That, when the Fireſhip blew up, ſhe was not above Half a Mile diſtant from the *Rupert*, and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, the Admiral wore to the Northward; upon which the *Rupert* ceaſed Firing, hauled her Wind, and paſſed to Windward of the Admiral and *Dorſetſhire*, and wore round after the *Dorſetſhire*; and was then again engaged with the *Spaniſh* Ships, in paſſing them.

That this Deponent did not ſee any Signal of Diſtreſs made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement; nor did he hear the *Rupert* hailed from the *Royal Oak* during the Engagement.

That, to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement, acted agreeable to the Naval Inſtructions and Diſcipline, and behaved with Conduct and Courage; and ſeveral times expreſſed his Uneaſineſs, that the Enemy's Five Ships were ſo long coming up.

Robert Langton.

Sworn before me, this 20th Day of *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. At the Braces.

Q. Was you not in the Line, as ſoon as you might have been, after the Admiral began to engage?

A. We made what Sail we could, to get into the Line; we let fall our Foreſail, and ſet our Top-gallant-ſails, and got into the Line as ſoon as we could.

Q. At your Bearing down, in order to get into the Line, Did you not meet a *Spaniſh* Ship, that the *Royal Oak* was engaged with, and haul up your Foreſail, and begin to engage her alſo?

A. I ſaw, nor know, nothing of it.

Q. No?

A. No.

Q. How long was it before you got into the Line, after the Admiral began to engage?

A. I believe, about a Quarter of an Hour: The Admiral fired about Two Broadſides.

Q. What Diſtance of Time was there from your getting into the Line, and your beginning to engage the Enemy?

A. I believe, about an Hour and Three-quarters.

Q. What was you doing all that time that you lay inactive?

A. We were active all that time, backing our Sails, and yawing our Ship to get nearer the Enemy.

Q. What Enemy?

A. The Five Sail coming up: We backed our Sails firſt; and, when the Wind ſhifted to the North-Eaſt, we yawed the Ship.

Q. When

Q. When did the Wind ſhift to the North-Eaſt?

A. About Two o'Clock, or a little after.

Q. Where was the Enemy then?

A. A little upon our Starboard-Quarter.

Q. What Diſtance were they then from you?

A. When the Wind ſhifted, about Three Miles.

Q. Where was the *Royal Oak* at that time?

A. I can't ſay; I was then down in the Waſte, and did not ſee her; I often looked to Leeward, and never ſaw her to Leeward.

Q. How far was you from the *Marlborough*, when you firſt hauled up into the Line?

A. Somewhat better than a Mile.

Q. What Diſtance might the *Spaniſh* Ships aſtern of you be then?

A. I believe about Four or Five Miles.

Q. How did they then bear of you, or in what Poſition; aſtern, or upon your Quarter?

A. Broad upon our Quarter at that time.

Q. Where were the *Dorſetſhire* and *Eſſex*, when you firſt brought to in the Line?

A. The *Dorſetſhire* was about a Point upon our Weather-Bow, and the *Eſſex* about Two Points, or better.

Q. Did you ſee them fire at the *Real*, or *Hercules?*

A. I ſaw them fire; but I don't know at what Ship; I took it to be the *Real*'s Second.

Q. Do you think their Shot reached the Enemy?

A. I can't tell.

Q. You might ſee; for you was not at a great Diſtance from them.

A. The *Eſſex* was about Half a Mile from us.

Q. Conſider, you are upon your Oath.

A. I know I am upon my Oath.

Q. Did you think they were within a Diſtance to do proper Execution?

A. I can't ſay.

Q. Were they in the Line?

A. We were in the Line: They were to Windward of us.

Q. Were the *Dorſetſhire* and *Eſſex* in the Line?

A. I can't tell: We were in a Line: They were to Windward of us.

Q. But were they in the Line?

A. I can't ſay, unleſs I had been on board them:—We might be to Leeward of the Line.

Q. Don't you think, It was more for the Good of the Service, and the Deſtruction of the Enemy, for you to have cloſed with the *Marlborough*, that was ſo near you, and have engaged the *Hercules*, than to yaw, and play your Tricks, to get nearer to the Five *Spaniſh* Ships coming up, who were at Four or Five Miles Diſtance?

A. We muſt have rendered an Eighty and a Seventy Gun Ship uſeleſs, that kept a continual Fire, if we had cloſed with the *Marlborough*.

Q. How long have you been at Sea?

A. Twelve Years.

Q. In what Ships?

A. In Merchant-Ships, the greateſt Part of the time; I never was in any Man of War, but the *Rupert*.

Q. Where did you ſail from?

A. From *London*.

Q. How near did you engage the Enemy, when you firſt began to fire?

A. When we firſt fired, we were not within Gun-ſhot; and I believe the Shot did not reach: We fired Four or Five Guns, and then the Captain ordered to ceaſe Firing, as we were not within Reach.

Q. What time was it afterwards, that you came near enough to do Execution?

A. About Half an Hour.

Q. How long did you engage ſo?

A. A little better than an Hour, before we hauled off.

Q. What was the neareſt Diſtance you was engaged with the Enemy, before you wore?

A. About Three Cables Length.

Q. How long did you engage within Three Cables Length?

A. Better than an Hour.

Q. How many Ships of the Enemy fired upon you together?

A. Two, before we wore.

Q. Did you ſee the *Royal Oak*, before you left off Engaging?

A. Yes.

Q. Where?

A. Upon our Larboard-Quarter; and ſhe was engaging the Enemy too.

Q. Did you make uſe of your Small-Arms?

A. No.

Q. Had you much of your Rigging cut by the Enemy's Shot?

A. Yes.

Q. Had you any Maſts ſhot?

A. No.

Q. Had you any Shot ſtruck your Hull?

A. I heard afterwards, that ſome ſtruck our Hull; but I don't know it.

Q. All this is before you wore?

A. Yes; we had a great deal of our Rigging cut, before we wore.

Q. Had you any Men killed or wounded?

A. We had ſome wounded.

Q. Was it before you wore?

A. I can't tell.

Q. Did you continue engaging the Two headmoſt Ships coming up, till you hauled off?

A. Yes.

Q. When you hauled off, Where was the *Eſſex?*

A. Juſt before we hauled off, the *Eſſex* was about a Mile and an Half to Windward of us, ſomewhat before our Beam.

Q. When you ſaw the *Eſſex* a Mile and an Half to Windward of you, Did your Head lie as the Admiral's did?

A. No;

A. No; becauſe we were going away Large.

Q. Why did you go away Large?

A. Becauſe the Five Ships paid away Large.

Q. When you wore in the Evening, What Diſtance was the *Eſſex* from you then?

A. I did not ſee her then; it was duſkiſh.

Q. Was the Admiral wore, before you hauled off?

A. The Admiral was coming down Large, when we hauled off: We hauled our Wind, to paſs ahead of him.

Q. At the time you hauled your Wind, to paſs ahead of the Admiral; At what Diſtance was the *Eſſex* from you then?

A. I can't tell; I did not ſee her then.

Q. Do you think it was poſſible for a Ship to be ſo near your Bow, as to ſet your Spritſail on Fire with the Wads from her Guns, and you not ſee her?

A. I muſt have ſeen her, if ſhe had been ſo near.

Q. Upon the Oath you have taken, you are to declare the Truth, the whole Truth, and nothing but the Truth.

A. Yes; I know it.

Q. Did you ſee the *Rupert*'s Spritſail on Fire, or not?

A. Yes; I ſaw Smoke come out of the Starboard-Clew of it.

Q. What time of the Day was that?

A. I think it was about Half an Hour after Four.

Q. Was that before your Wearing?

A. It was at the time of Wearing, to the beſt of my Knowlege.

Q. Recollect well: Be ſure, whether it was before Wearing, after Wearing, or at the time of Wearing?

A. To the beſt of my Knowlege, it was at the time of Wearing.

Q. Did you not then ſee the *Eſſex*?

A. She might then be on our Bow, and I not ſee her; for I was on the Starboard-ſide.

Q. Did you never hear any of your People on board ſay, by what Accident the Spritſail came to be ſet on Fire?

A. Several of the People ſaid, It was from the *Eſſex*'s Wads; and others ſaid, It was from other Ships.

Q. Was you not near enough to the Enemy, for their Wads to have done it?

A. No; I am ſure, we were not.

Q. You are upon your Oath; Did you ever hear the *Eſſex* hail the *Rupert*, to tell, that her Spritſail was on Fire?

A. No; I did not.

Q. Did you ever hear your People ſay ſo?

A. Yes; I heard ſeveral People of our Ship ſay, That the *Eſſex* did hail us on that Account.

Q. Did you ever ſee the *Royal Oak* haul her Fore-tack on board, and haul upon your Weather-Beam?

A. I ſaw her upon our Weather-Beam, but I did not ſee her haul her Fore-tack on board.

Q. When you ſaw her upon your Weather-Beam, was it at the time you yawed, or when you was cloſely engaged within Three Cables Length?

A. It was at the time we were engaged with the Two headmoſt Ships.

Q. Was it at the time you fired your Larboard-Guns, that you ſaw the *Royal Oak* upon your Weather-Beam?

A. No; it was when we fired our Starboard-Guns.

Q. Did you ever ſee the *Royal Oak* to Leeward, any Part of Time?

A. No; never.

Q. Did you not obſerve, when you firſt brought up in a Line, the *Royal Oak* to be upon your Lee-Quarter, backing her Sails to keep clear of the *Rupert*?

A. No; I am certain, I never ſaw it.

Q. Did you never hear the *Royal Oak* hail the *Rupert*, nor the *Rupert* hail the *Royal Oak*?

A. I never heard either.

Q. Did you ſee the *Royal Oak*'s Stopper of her Anchor ſhot?

A. No.

Q. Do you remember any Shot ſtriking your Booms?

A. Yes; a Shot hit the Booms on the Starboard-ſide, about Three or Four Foot before the Main-maſt; it took the Fiſh, and the Sails that lay on the Top of it.

Q. What Ship was that Shot from?

A. I can't tell, whether from the Firſt or Second of the Five *Spaniſh* Ships.

Q. Did that Shot ſtrike any of the Main-ſhrouds?

A. No; not to my Knowlege.

Q. Where was the *Royal Oak*, when you received that Shot?

A. I don't know at that time.

Q. Don't you apprehend, that the Two Headmoſt of thoſe Five Ships, ſeeing the *Marlborough* was diſabled, would have fetched to Windward of the *Marlborough*, and cut her off, had not the *Rupert* engaged them?

A. Yes; they would have fetched the *Marlborough*, if they had kept their Wind, as at firſt; but, upon the *Rupert*'s engaging them, they edged away.

Q. Which began to engage firſt, the *Rupert*, or the *Royal Oak*?

A. The *Royal Oak*.

Q. How long did ſhe begin to engage before the *Rupert*?

A. About Half an Hour.

Then one of the Members ſaid, I think he ſaid, juſt now, He never ſaw the *Royal Oak*.

To which the Witneſs anſwered, I was aſked, How the *Royal Oak* bore, when we firſt went into the Line; and I ſaid, I did not ſee her then.

Upon which the Court called for his Examination to be read: And the ſame was read accordingly: And then the Court proceeded to a farther Examination.

Q. What Wind had you, when you bore away the Firſt time, after Bringing to?

A. Wind enough to keep the Sails aſleep.

Q. How many Knots might you go then?

A. Under our Topſails, about a Knot, or a Knot and an Half.

Q. When you bore down the Second time, what Sail had you ſet?

A. Our Topſails and Foreſail.

Q. How long did you continue bearing down under that Sail, till you got into the Track of the Five *Spaniſh* Ships coming up?

A. Not quite a Quarter of an Hour.

Q. And then you hauled up?

A. Then we hauled up our Foreſail, and came to the Wind again.

Q. How far might the Headmoſt of the Five *Spaniſh* Ships be from you, when you then brought up in their Track?

A. I believe, between Three and Four Miles at that time.

Q. What did you do then?

A. We yawed the Ship.

Q. How long were they coming up, before you engaged?

A. Better than an Hour.

Q. Was you yawing all that time?

A. No; not all that time.

Q. What was you doing then?

A. We were backing our Sails: We did not begin to yaw, till the Wind came to the North-Eaſt.

Q. Did you keep under Way all the time?

A. Yes, moſt of the time.

Q. When you kept backing your Sails, was the *Royal Oak* then engaged with the Enemy?

A. No; ſhe began to engage, about the time we began to yaw.

Q. How do you know, ſhe then began to engage?

A. I ſaw ſeveral Shot fired from her.

Q. How far was the *Royal Oak* from you, when firſt you began to back your Sails?

A. I can't tell; I did not ſee her then.

Q. Did you ſee the *Royal Oak*, while you backed your Sails, before you yawed?

A. No; not till we yawed: I ſaw her then, by opening her.

Q. Where muſt ſhe have been, before you opened her by yawing?

A. She might be right aſtern.

Q. Might ſhe not be to Leeward, and you not ſee her?

A. No.

Q. Why?

A. Becauſe I was generally on the Starboard-ſide; and ſometimes I got upon the Gunnel, and looked to Leeward, and did not ſee her to Leeward.

Q. Did you not know, there was a Man of War ſtationed aſtern of you in the Line of Battle?

A. Yes.

Q. Did you take notice, at that time, that ſhe was not in her Station, according to the Line of Battle?

A. No; I did not.

Q. Had you any Reaſon then to believe ſhe was not in her Station?

A. No; at that time I had not.

Q. Then, as you knew there was a Man of War ſtationed aſtern of you in the Line of Battle; and had no Reaſon to believe, but ſhe was in her Station; Did you not look to ſee, whether your backing might not occaſion your falling on board her, unleſs ſhe backed at the ſame time you did?

A. I took no notice at all of it.

Q. In your yawing backwards and forwards, and backing your Ship, Did that bring you to Windward, or to Leeward, of the Line?

A. To Leeward.

Q. Did you ever obſerve, during any Part of the Day, the *Royal Oak* to be to Leeward of the *Rupert*?

A. No.

Q. In all that Day's Action, did you ever hear any Grumbling among your Ship's Company, that the *Royal Oak* did not do her Duty as well as you?

A. No; I did not.

Then the Queſtions delivered in by the Proſecutors for the Crown, were asked, as follows; *viz.*

Q. When the Admiral ſtood to the Northward, on the Starboard-tack, after Wearing, in the Evening, What Station was the *Rupert* in?

A. The Second Ship aſtern of the Admiral: The *Dorſetſhire* was between her and the Admiral.

Q. What Ship was then next aſtern of the *Rupert*?

A. I can't tell.

Q. How many Shot did the *Rupert* receive in her Hull and Maſts, during that whole Day's Action?

A. I don't know.

Q. Do you know, what Number ſhe received in any one Side?

A. I do not.

Q. Did the Admiral, and his Diviſion, in ſtanding to the Northward, after Wearing, paſs to Windward, or to Leeward, of the *Marlborough*?

A. The Admiral, *Dorſetſhire*, and *Rupert*, paſſed to Leeward of the *Marlborough*: As to any other Ships, I can't ſay.

Q. Did any paſs to Windward of the *Marlborough*?

A. I can't ſay: It was then duskiſh.

Q. Did you keep a Journal?

A. Yes.

Q. Did Captain *Ambroſe* ever ſend for your Journal, and direct you to write it over again, according to his dictating?

A. He never did.

Q. Did Captain *Ambroſe*, or any Agent of his, ever interfere with your writing your Journal?

A. Never did.

Asked by the Priſoner,

Q. Do you remember, when we went away down, to cut thoſe Five Ships off, in what Condition did we leave the Admiral and the *Real*?

A. We left them Engaging at that time.

Q. Which ſeemed to have the beſt of the Battle, we, or the *Spaniards*?

A. Our Ships at that time.

Q. Did you, or did you not, believe, at that time, our Ships would have taken thoſe Two Ships?

A. Yes; I did believe they would.

Q. When the *Marlborough*'s Maſts fell, whereabout was the *Hercules* then?

A. I can't exactly tell, where ſhe was then.

Q. Did you ſee her at any time of the Day ſhoot ahead, and run out of Gun-ſhot upon her Admiral's Lee-Bow?

A. I ſaw her paſs under the *Real*'s Lee-Quarter; but whether ſhe went ahead of her, or not, I can't tell.

Q. Do you recollect, before we bore away, Whether the *Real* received any, and what, Damage, in her Maſts, Yards, and Sails?

A. Her Main-yard was carried away, before we bore away; and hung on each Side down upon the Deck.—Her Rigging was ſhot away; but I can't tell the Particulars.

Q. What Sail did ſhe firſt engage with?

A. Her Topſails and Foreſail.

Q. Do you remember the Condition the Foreſail was in, whether it was the worſe for the Battle, before we bore away?

A. Yes; I am ſure it was: I remember it was very much ſhot through.

Q. When we bore down into the Track of thoſe *Spaniſh* Ships, Do you, as a Seaman, think, if we had bore down a Cable, or Half a Cable's Length, farther than we did, that thoſe Five *Spaniſh* Ships would not have laid in their own Line, joined their Admiral, and ſhut us in to Leeward of them?

A. I think, if they had continued their Courſe they firſt ſteered, they muſt have fetched to Windward of us.

Q. Did their Shot go over us, after we got within Point-blank, by ſtraggling Shot, or by whole Broadſides?

A. I can't ſay, whether by whole Broadſides, or not; but I ſaw ſeveral Shot go over together.

Q. Did you ſee any of them drop in the Water, on the other Side beyond us?

A. Yes.

Q. How far did they drop beyond us?

A. About Two Cables Length.

Q. Do you think, if thoſe Shot had ſtruck our Hull, they would have gone through both Sides?

A. I believe, if they had ſtruck the Ship, they would have done great Execution; but I am not a Judge, whether they would have gone through both Sides, or not.

Court asked,

Q. Do you think, in the Situation you ſaw the *Real*, before you bore down, you could not have ſooner got up to her, than to the Five *Spaniſh* Ships coming up?

A. To be ſure we could.

Q. Do you think, a Man ought to be hanged, if he went to engage a diſabled Ship, when he had able Ships to engage with?

The Court thinking this an improper Queſtion, no Anſwer was given to it.

Priſoner asked,

Q. Do you, or do you not, think, that if I had thought it would have been a gallanter Action, or doing more immediate Service to my Country, that I would not have gone to the *Real*, ſooner than to the Five Ships?

A. I really believe you would.

Court asked,

Q. What time was it, when you firſt bore away to engage the Enemy?

A. Between One and Two o'Clock.

Q. Was the *Real* then ſo diſabled as you mentioned?

A. Yes.

Q. You ſay, the *Hercules* bore away before the Wind: What do you apprehend was the Reaſon of it?

A. I apprehend from the *Dorſetſhire*'s or *Eſſex*'s Fire, I can't ſay which.

Q. What made her haul up again?

A. I can't tell, unleſs it was our Bearing down upon her, in order to cut her off.

Then he withdrew.

James Davidſon, rated Corporal, but acted as Midſhipman, on board the *Rupert*, was called in, and ſworn.

His Depoſition was read, as follows:

James Davidſon, *Corporal on board his Majeſty's Ship the* Rupert, *at the Time of the late Engagement in the* Mediterranean, *between his Majeſty's Fleet, and the Combined Fleet of* France *and* Spain, *on the* 11*th* February, 1743. *maketh Oath*;

THAT, when Admiral *Mathews* made the Signal for the Line of Battle ahead, in the Morning of the aforeſaid Day, the *Rupert* got into the Line; and continued in it; and did not, during any time while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorſetſhire* and *Eſſex* were ſtationed between the *Marlborough* and *Rupert*, and were to Windward of the *Rupert*, and began to fire quickly after the Admiral.

That the *Rupert* bore down at the ſame time the Admiral did, and brought to in the Line; and, juſt after ſhe brought to, the *Real*'s Second aſtern bore away before the Wind; upon which

the *Rupert* ſtood after her; whereupon ſhe run cloſe under the *Spaniſh* Admiral's Lee-Quarter; and then the *Rupert* brought to again, and lay with Topſails aback, to wait for the Five *Spaniſh* Ships aſtern, that were coming up; which were then about Four or Five Miles diſtant; and did not get up with the *Rupert* till about Three o'Clock; and then ſhe began to fire at them; but not till ſome time after they had fired at her.

That, about Two o'Clock, Captain *Ambroſe* ordered the Maſter to hail the *Royal Oak*; and made Sail to go down to engage the Five ſternmoſt Ships.

That he does not know what Anſwer was made from the *Royal Oak*; but the *Rupert* thereupon edged down a little, and brought to again.

That a few Guns were at firſt fired from the *Rupert*, at too great a Diſtance; but, when Captain *Ambroſe* obſerved they did not reach the Enemy, he ordered Firing to ceaſe; and afterwards cauſed Two or Three Guns to be fired, at a Diſtance of Time from each other; and, when he found the Shot would well reach the Enemy, he ordered Firing to be continued; tho' the Enemy had fired ſome time at the *Rupert*, and their Shot went far over her, before ſhe began to fire at all.

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering for their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their firſt Courſe, they muſt have been cloſe along-ſide the *Rupert*.

That the *Rupert* engaged the ſternmoſt Ships of the Enemy, about the time the *Marlborough*'s Maſts fell; the Headmoſt of thoſe Ships being then come up within about point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down to the *Real*.

That, when the Fireſhip blew up, ſhe was not above Half a Mile diſtant from the *Rupert*; and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, the Admiral wore to the Northward; upon which the *Rupert* ceaſed Firing, hauled her Wind, and paſſed to Windward of the Admiral and *Dorſetſhire*, and wore round after the *Dorſetſhire*; and was then again engaged with the *Spaniſh* Ships, in paſſing by them.

That this Deponent did not ſee any Signal of Diſtreſs made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement; nor did he hear the *Rupert* hailed from the *Royal Oak*, during the Engagement.

That, to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement, acted agreeable to the Naval Inſtructions and Diſcipline, and behaved with Conduct and Courage; and ſeveral times expreſſed his Uneaſineſs, that the Enemy's Five Ships were ſo long coming up.

James Davidſon.

Sworn before me, this
20th *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

One of the Members of the Court obſerving, That the Depoſitions of all the Priſoner's Witneſſes were exactly the ſame; the Judge-Advocate acquainted the Court, That, before taking their Depoſitions, he aſked them all the ſame Set of Queſtions; and that, when the Witneſſes Anſwers were to the ſame Effect, their Depoſitions were drawn out in the ſame Words: And that he had proceeded in the like Manner, in taking the Depoſitions of the Witneſſes in Support of the Charges; which was the Reaſon, that a great many of them alſo run in the ſame Strain.

Q. What was you on board the *Rupert*?

A. I acted as Midſhipman, though I was ſet down as Corporal.

Q. Where was you quartered?

A. At the Braces.

Q. Can you read and write?

A. Yes, both.

Q. Where was you when the Admiral firſt engaged?

A. Going down into the Line.

Q. Did you not obſerve a *Spaniſh* Ship to Windward of the *Spaniſh* Line, that the *Royal Oak* was engaged with?

A. No, I did not.

Q. What Countryman are you?

A. I am an *Engliſhman*, a *Londoner*.

Q. How long have you been at Sea?

A. Off and on, about Fifteen or Sixteen Years, and not above Three Years and an Half of that Time on Shore.

Q. How long was it before you hauled up in a Line with the Admiral, after the Admiral began to engage?

A. About a Quarter of an Hour; but I can't be certain to the Time.

Q. What did you do, after you hauled up in the Line?

A. We lay a ſmall Matter of Time in that Poſture; and then the *Spaniſh* Admiral's Second aſtern ſeemed to wear round: With that, our Maſter, or Captain, I can't tell which, ordered the Foreſail to be ſet, and the Fore-ſtayſail to be hoiſted; and we bore down towards her.

Q. How long did you do ſo?

A. A ſmall Way: We did not go a great Way before ſhe wore round, and came upon the Larboard-tack, and ſtood for her Admiral again.

Q. What did you do then?

A. We hauled our Foreſail up, and came to the Wind again.

Q. Did

Q. Did the Stayſail remain?

A. I can't ſay.

Q. How long did you lie in a Line with the Admiral, before you bore away again?

A. We were then to Leeward of the Admiral.

Q. How long did you lie in that Situation?

A. About a Quarter of an Hour, or thereabout.

Q. Did you ſee the Admiral and *Marlborough* engaging, when you bore away the Second time?

A. Yes; they had been engaged a good while before that.

Q. Did you ſee the *Real* and *Hercules* at the ſame time?

A. Yes.

Q. In what Condition was the *Real* at that time?

A. I took it, that the *Namur* and *Marlborough* were engaging the *Real* at that time.

Q. And what was the *Hercules* doing?

A. The *Dorſetſhire* and *Eſſex* ſeemed to be engaging her.

Q. Did you ſee the *Real* at all diſabled at that time?

A. No, I did not obſerve it then: We that were quartered at the Braces, could not ſee what was doing every Minute.

Q. What o'Clock was it, when you bore away the Second time to the Enemy?

A. I believe, between Two and Three o'Clock; but I can't be poſitive to the Time.

Q. When you obſerved the *Hercules* to bear round, in order to cloſe her Admiral, What Diſtance do you judge her to have been from her Admiral?

A. She appeared to be a good Diſtance to Leeward; but I can't ſay how far.

Q. What Diſtance of Time was it, between your firſt hauling up in a Line with the Admiral, and your engaging the Enemy within point-blank Shot?

A. I believe, about a Couple of Hours, or ſuch a Matter.

Q. Did you ſee the *Marlborough* loſe her Maſts?

A. No; I ſaw her preſently afterwards.

Q. What time of the Day was that?

A. I believe, paſt Three, or about Three; it was thereabout; I can't ſay exactly.

Q. Did you keep any Glaſs going?

A. I don't remember any.

Q. What Diſtance of Time was it, from your Second Bearing away, till you ſaw the *Marlborough*'s Maſts were gone?

A. It was better than an Hour, I am ſure.

Q. After you brought up the Second time, did you lie ſo, till you began to engage the Five *Spaniſh* Ships?

A. We kept yawing backwards and forwards, and laid our Topſails aback.

Q. Was you ever within Point-blank of the Enemy, after thoſe Five Ships came up?

A. I can't tell, as to Point-blank.

Q. How many Cables Length was you from them?

A. I believe, about Four Cables Length at firſt, or not quite Four.

Q. How far was you, when you engaged at the neareſt?

A. Between Two and Three Cables.

Q. What! before you wore at Night?

A. Yes, before we wore.

Q. Did you fire your Small-Arms, when you was neareſt?

A. I did not ſee any fired: I don't know whether any were fired, or not.

Q. What Number of Men had you killed, before you wore?

A. None.

Q. Had you any wounded?

A. Yes; but I can't ſay whether before, or after we wore.

Then the Queſtions delivered in by the Proſecutors for the Crown, were asked; *viz.*

Q. When the Admiral ſtood to the Northward, on the Starboard-tack, after Wearing, in the Evening, What Station was the *Rupert* in?

A. We brought to upon the Starboard-tack, the Second Ship aſtern of the Admiral: The *Dorſetſhire* was between us and the Admiral.

Q. What Ship was next aſtern of the *Rupert*, on the Starboard-tack?

A. I don't know.

Q. Do you know, whether the *Rupert* received any, and how many Shot, in her Hull and Maſts, during that Day's Action?

A. I don't remember any in the Maſts: Her Rigging was much cut, and there were many Holes in the Sails, and there were Two Shot in her Hull.

Q. Were thoſe Shot in her Hull received before, or after Wearing?

A. Before.

Q. Were they in the Starboard or Larboard-ſide?

A. They were received in the Starboard-ſide.

Q. What time do you think they were received?

A. It was after Three o'Clock; I believe it was Half paſt Three.

Q. Did they go through?

A. No; they lodged in the Side.

Q. Did the Admiral, and his Diviſion, in ſtanding to the Northward, after Wearing, paſs to Windward, or to Leeward, of the *Marlborough*?

A. To Leeward.

Q. What Ships paſſed to Leeward?

A. We paſſed to Leeward of her; I remember we ſaw her Stern.

Q. Do you know of any other Ships that paſſed to Leeward of her?

A. No; I do not.

Court aſked,

Q. Did you keep a Journal?

A. Yes, I did, till I found I was not rated; and then I left it off.

Q. Do

Q. Do you know any thing of Hailing between the *Royal Oak* and *Rupert?*

A. Yes; I heard the Captain order the Maſter to hail her.

Q. Where was you then?

A. I was in the Starboard-Gangway; and heard the Captain bid the Maſter hail her; but I don't know what was ſaid.

Q. What Time was that?

A. About Two o'Clock.

Q. Are you ſure, That what you imagined to be hailing the *Royal Oak*, was not an Anſwer to the *Royal Oak*'s hailing the *Rupert?*

A. I know nothing of that.

Q. Was you to Windward, or to Leeward, of the Admiral, at that time?

A. We were to Leeward.

Then he withdrew.

Lieutenant *Williams*, of the *Rupert*, was called in, and ſworn.

His Depoſition was read, as follows:

Lieutenant William Williams, *late Lieutenant of his Majeſty's Ship the* Rupert, *at the Time of the late Engagement in the* Mediterranean, *between his Majeſty's Fleet, and the Combined Fleet of* France *and* Spain, *on the* 11*th* February, 1743. *maketh Oath*;

THAT, when Admiral *Mathews* made the Signal for the Line of Battle ahead, in the Morning of the aforeſaid Day, the *Rupert* got into the Line, and continued in it; and did not, during any time while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorſetſhire* and *Eſſex* were ſtationed between the *Marlborough* and *Rupert*, and were to Windward of the *Rupert*; and began to fire quickly after the Admiral.

That the *Rupert* bore down at the ſame time the Admiral did, and brought to in the Line; and, juſt after ſhe brought to, the *Real*'s Second aſtern bore away before the Wind: Upon which, the *Rupert* ſtood after her: Whereupon ſhe run cloſe under the *Spaniſh* Admiral's Lee-Quarter; and then the *Rupert* brought to again; and lay, with Topſails aback, to wait for the Five *Spaniſh* Ships aſtern, that were coming up; which were then about Four or Five Miles diſtant, and did not get up with the *Rupert* till about Three o'Clock; and then ſhe began to fire at them; but not till ſome time after they had fired at her.

That it was not poſſible for the *Rupert* to get near enough to the *Real*, and her Second, to do Execution, without being between Two Fires, and breaking the Line; becauſe ſhe muſt have gone between the *Dorſetſhire* and *Eſſex*, and the *Spaniſh* Admiral's Second, and been expoſed to their Fire.

That a few Guns were at firſt fired from the *Rupert*, without point-blank Shot; but, when Captain *Ambroſe* obſerved they did not reach the Enemy, he ordered Firing to ceaſe; and afterwards cauſed a Gun to be fired Point-blank from each Deck: And, when perceiving we were within point-blank Shot, he ordered Fireing to be continued; though the Enemy had fired ſome time at the *Rupert*, and their Shot went far over her, before ſhe began to fire at all.

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering towards their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their Firſt Courſe, they muſt have been cloſe along-ſide the *Rupert*.

That the *Rupert* engaged the Headmoſt of the Five *Spaniſh* Ships of the Enemy, about the time the *Marlborough*'s Maſts fell, the Headmoſt of thoſe Ships being then come up within about point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down to the *Real*.

That, when the Fireſhip blew up, ſhe was not above Half a Mile diſtant from the *Rupert*, and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, the Admiral wore to the Northward; upon which the *Rupert* ceaſed Firing, hauled her Wind, and paſſed to Windward of the Admiral and *Dorſetſhire*, and wore round after the *Dorſetſhire*; and was then engaged with the *Spaniſh* Ships, in paſſing by them.

That this Deponent did not ſee any Signal of Diſtreſs made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement; nor did he hear the *Rupert* hailed from the *Royal Oak* during the Engagement.

That, to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement, acted agreeable to the Naval Inſtructions and Diſcipline; and behaved with Conduct and Courage; and, ſeveral times, expreſſed his Uneaſineſs, that the Enemy's Five Ships were ſo long coming up.

William Williams.

Sworn before me, this 20th
Day of *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Upper-Gun-deck, from the Main maſt forward.

Q. Are you Lieutenant of any Ship now?

A. No; I was laſt of the *Kingſton*.

Q. Did the *Rupert* bear down into the Line, before ſhe hauled up?

A. Yes; ſhe bore down into the Line, without Hauling up at all.

Q. As you was going down into the Line, Did you ſee the *Royal Oak* engage any Ship?

A. No; ſhe did not engage, while we were getting down into the Line, but after we were got into the Line.

Q. Did ſhe engage, after you got into the Line?

A. Yes; Half an Hour before we did, with the Headmoſt of the Five *Spaniſh* Ships.

Q. I ſuppoſe that Ship the *Royal Oak* engaged, was conſiderably ahead of the other Four?

A. Yes; ſhe was ahead of the other Four, about Two or Three Cables Length diſtant from the Headmoſt of the other Four, more than the other Four were from each other.

Q. You ſay, The *Royal Oak* engaged that Ship Half an Hour, before you engaged: What was you doing then, that you did not aſſiſt her?

A. She was conſiderably aſtern of us.

Q. What was you doing that Half-hour, that ſhe was engaged before you was?

A. We lay inactive; for the *Royal Oak* was aſtern of us.

Q. Why did you not, during that time, back, and endeavour to get to her Aſſiſtance?

A. The *Hercules* bore away, and we let fall our Foreſail, and ſtood after her; and, when ſhe ſaw that, ſhe hauled her Wind, and went under the *Real*'s Starboard-Quarter; We did not go above Six or Seven Minutes after her.

Q. What was the Reaſon you did not go to the Aſſiſtance of the *Royal Oak?*

A. She was a conſiderable Way aſtern of us; about Half a Mile.

Q. What did the *Royal Oak* do afterwards?

A. After the *Royal Oak* had engaged about Half an Hour, ſhe hauled her Wind again; ſhe hauled off from the Enemy; and our Maſter ſpoke to her with a Speaking-trumpet from the Larboard-Quarter.

Court. Conſider, you are an Officer; you are upon your Honour, as well as you are upon your Oath: If you conceal any thing, you are as much forſworn, as if you were to ſpeak that which is not Truth.

Q. What was the Reaſon of the *Royal Oak*'s Hauling off from the Enemy?

A. I can't ſay.

Q. Did you ever find Fault with her for doing ſo?

A. I think every Perſon would have Reaſon to find Fault with her for Hauling off from the Enemy.

Q. Was it not as natural for the *Royal Oak* to complain of your not coming down to her Aſſiſtance, as it was for the *Rupert* to complain of her Hauling off?

A. She never was to Leeward of us: We were employed Part of the Time in Bearing away after the *Hercules*, who was Bearing away from us.

Court. You was but very little Time in Bearing away after the *Hercules.*

Q. Did you hear the Captain give any Orders to hail the *Royal Oak?*

A. I ſaw the Captain ſpeak to the Maſter, and bid him hail the *Royal Oak.*

Q. Where was the *Royal Oak* then?

A. She was then hauled up upon our Weather-Quarter.

Q. Did ſhe not haul up to ſpeak to you?

A. She hauled up, but ſhe did not ſpeak to us.

Q. Did ſhe haul to you, or from you?

A. She hauled to Windward.

Q. If ſhe was not to Leeward of you, How could ſhe haul up, and you afterwards hail her?

A. She never was to Leeward of us; but ſhe might haul up more to Windward than ſhe was.

Q. Then ſhe would have been farther off from you than ſhe was before; which does not ſeem to be a Situation for you to have hailed her in.

A. When ſhe hauled to Windward, ſhe ſtretched ahead withal; which brought her nearer to us, than ſhe was before.

Q. What became of that ſingle Ship, after the *Royal Oak* left her?

A. She kept as ſhe was, ſtretching along ahead of the other Four Ships, towards her own Admiral.

Q. Did ſhe not edge away more than the other Four Ships?

A. No; I can't ſay that: They all kept edging away; none of them were cloſe to the Wind.

Q. Did it appear, that the Headmoſt of thoſe Ships was making up to their Admiral, in order to join him?

A. They all ſeemed to make towards their Admiral, to join him; but ſhe was nearer by Two or Three Cables Length, than the others.

Q. As an Officer, a Man of Honour, and as you are upon your Oath, declare the Truth: When the Maſter took the Speaking-trumpet, and hailed from the Larboard-Quarter, Was it in Anſwer to the *Royal Oak*'s Hailing, or was it to hail the *Royal Oak?*

A. I cannot tell; I was quartered upon the Main-deck, from the Main-maſt forward.

Q. Was you upon the Quarter-deck, at the time Captain *Ambroſe* wanted to go to Leeward of the Line?

A. I was not.

Q. You have ſaid in your Depoſition, That you was in the Line?

A. Yes.

Q. How do you know you was in the Line?

A. We had the *Namur*'s Maſts in One.

Q. Are you ſure of that, upon your Oath?

A. I am ſure, we had her Maſts in One, when ſhe was engaging the *Real*, when we firſt brought to.

Q. Was the *Marlborough* then in a direct Line between you and the *Namur?*

A. I think, at that time, the *Marlborough* was rather to Windward of the *Namur*; afterwards I ſaw her to Leeward, rather upon the *Namur*'s Weather-Quarter, when we began to engage.

Q. Do you remember the *Royal Oak*'s ſhooting ſo nigh you, when you firſt brought up in

the Line, ſo as to be obliged to back her Sails, in order to prevent her falling on board you?

A. I don't remember any ſuch thing; I don't remember ſhe was ſo near as that; the neareſt, I think, was, when the Maſter hailed her upon the Weather-Quarter.

Q. Was it after the *Royal Oak* ceas'd Fireing, that the Hailing was?

A. Yes; it was after the *Royal Oak* left off Firing, and had hauled up upon our Weather-Quarter.

Q. What Sail had ſhe, when ſhe hauled up to Windward of you?

A. Her Foreſail and Three Topſails, as near as I remember.

Q. Had ſhe her Fore-tack on board?

A. I think ſo; her Foreſail was certainly ſet.

Q. Are you ſure of it?

A. As near as I can remember, her Foreſail was ſet; but I can't be poſitive; but I am ſure ſhe had her Three Topſails.

Q. Do you think her Jib was ſet?

A. I can't ſay; but I don't think it was a proper Sail to be ſet.

Q. How was the Wind then?

A. Upon the Beam, or a Point abaft the Beam; there was little of it, and a great Swell; and, therefore, I think that Sail was not a proper Sail to be ſet.

Q. How far was the *Hercules* from her Admiral, when ſhe wore round again, to join her Admiral?

A. I believe, about Two Cables Length; ſhe did not wear round; ſhe hauled her Wind again, to join her Admiral.

Q. Was ſhe then in a Line with her Admiral?

A. She was ſomething upon his Lee-Quarter.

Q. How far was you then from the *Hercules*?

A. About a Mile, I believe.

Q. At what time of the Day did the *Eſſex* ſet your Spritſail on Fire?

A. I can't tell the Hour it was done; but I remember the Starboard-clue of the Spritſail was on Fire.

Q. If you can't remember the Time of the Day, you may remember what your Ship was doing: Was it when you was Hauling up, or Engaging, or Yawing, or when?

A. I really can't tell.

Q. Do you think, it was the *Eſſex*'s Wads that ſet your Spritſail on Fire?

A. I think it was one of her Wads; I think it could be no other Ship.

Q. How long was it before you wore?

A. I always apprehended it to be after we wore; but I am not certain; and that we received it from the *Eſſex*.

Q. What Diſtance was the *Eſſex* from you, when you wore?

A. She was pretty near us then: I can't ſay how far.

Q. Did you not haul up ſome time, before you wore?

A. We hauled up to Windward of the *Namur*, after ſhe had wore, and ſtretched athwart her Fore-foot.

Q. What was the neareſt Diſtance you engaged the Enemy, before Wearing?

A. About Three or Four Cables Length, or Three Cables and an Half.

Q. For how long did you engage them ſo?

A. About an Hour and an Half, or an Hour and a Quarter: I had no Watch about me.

Q. What Reaſon have you to judge you was ſo near the Enemy, as within Three Cables and an Half, as you had no Men killed, nor Maſts wounded?

A. Becauſe we fired a point-blank Gun; and I am certain, we were within Point-blank, becauſe I levelled the Gun horizontally in the Carriage, and pointed the Gun; and I did not ſee the Shot fall ſhort; and, I am ſure, it muſt either ſtrike the Enemy's Ship, or go over it.

Q. Might not the Ship have rolled to Windward, and made it a random Shot?

A. If the Ship had taken a Weather-roll, it might; but I took an Opportunity to fire it, when the Ship was ſteady and ſtill.

Q. How much Wind might you have then?

A. Very little, and a great Swell; we might go about a Knot and a Quarter; not ſo much as a Knot and an Half.

Q. When you obſerved the *Hercules* to haul up again, and you hauled up afterwards yourſelves, how did ſhe then bear from your Ship?

A. About Two Points upon our Lee-Bow.

Q. Where was the *Marlborough* then?

A. She was almoſt aſtern, or quite aſtern of the *Namur*.

Q. How was ſhe, with reſpect to you?

A. Much about ahead of us, or a little upon our Weather-Bow.

Q. Do you remember any thing of your Yawing backwards and forwards?

A. Yes.

Q. Upon your beginning to engage the headmoſt Ship, ſhe paid away, and you paid away after her?

A. Yes.

Q. Soon after the *Namur* engaged, did ſhe haul to Windward?

A. Yes; about an Hour after.

Q. Is it poſſible, upon the *Namur*'s Wearing, in the Evening, that you ſhould get to Windward of her?

A. Yes; we hauled our Wind.

Q. And then you was not above Half a Mile from her?

A. We were above a Mile and a Quarter from her.

Q. The *Namur*, after Engaging an Hour, hauled off; you edged away to Leeward of the Line, after the *Hercules*; and got more to Leeward by Yawing backwards and forwards, and by Edging away while you was engaging; and did not leave off Engaging, till the *Namur* wore; and, therefore, the *Namur* could not be far from you:

you: How then was it poſſible for you to get to Windward of her?

A. We hauled our Wind, and ſtretched acroſs her Fore-foot: We were far enough from her to weather her; and did weather her.

Q. When the Admiral hoiſted his White Flag at the Fore-topmaſt-head, Did he haul down the Signal for the Line, or keep it up?

A. I can't recollect, whether it was hauled down, or not.

Q. During the time you was engaged within Three or Four Cables Length, do you think, as an Officer, that you engaged near enough, as a *Britiſh* Man of War ought?

A. No; I think not.

Q. Do you think, you did all you could to near thoſe Ships, according to your and their Situation?

A. Yes; I think we did, becauſe, as we fired upon them, they kept Edging away, and we after them; ſo that we could not have got nearer to them, without going to Leeward of them.

Q. What Sail was you under?

A. Our Topſails.

Q. Could you not have made more Sail?

A. We could have crouded more Sail; but if we had done ſo, we muſt have gone to the Weſtward of them to Leeward, and then they would have cut us off from our Fleet.

Q. How many Men had you killed?

A. None at all.

Q. How many had you wounded?

A. There were ſome wounded.

Q. How many had you wounded, before you wore?

A. I don't know of any being wounded, before we wore.

Q. What Damage did you receive in your Hull, before you wore?

A. I don't know of any, before we wore.

Q. You ſay, The Admiral engaged an Hour, and then hauled off: Do you remember, he ever bore away again, before he wore?

A. He did near the Enemy again, before he wore.

Q. Did he engage any Ship of the Enemy, after he edged down again, before he wore?

A. No; I don't know, that he did; he only fired his Stern-Chace, in going off.

Q. You have declared, you don't know, whether the Signal for the Line was out, or not, when you wore?

A. Yes.

Q. If the Signal for the Line of Battle was flying then, I apprehend your Station was ahead of the Admiral?

A. Yes; but, if we had paſſed ahead of the Admiral, we ſhould have had no Ships to have engaged, as they paſſed by.

Q. If you had wore ahead of the Admiral, when he did, Would you not have come to a cloſer Engagement, than by going aſtern?

A. I apprehend, if we had wore then, we ſhould have been nearer.

Q. Do you think, you could not have fetched your Station?

A. I don't think we could.

Q. But I apprehend, that if you had wore, and kept ahead of him, you muſt have come to a cloſe Engagement, and have been in your Station?

A. If we had wore ahead of the Admiral, we might have been nearer the Enemy; but we could not, in that Caſe, have fetched our Station.

Q. After the Admiral wore, What Station did you fall into?

A. Aſtern of the *Dorſetſhire*.

Q. What was the Reaſon of your Wearing aſtern of the *Dorſetſhire*? Was it becauſe the Signal for the Line was hauled down; or becauſe Captain *Ambroſe* thought to do more Service there, againſt the Enemy; or was it, becauſe the *Rupert* could fetch no other Station?

Witneſs. I don't think, that is a fair Queſtion.

Court. Your Opinion is aſked of it: It is not againſt yourſelf: It is a fair Queſtion.

A. Conſidering how the Ships bore of us, and how our Head was; in the firſt place, had we wore, when we paſſed by thoſe Ships, we muſt have been raked by them; and ſhould have been able only to engage One or Two, as we paſſed them: I afterwards, heard Captain *Ambroſe* ſay, That he thought to diſtreſs the Enemy more, by ſtretching ahead of the Admiral, and Wearing afterwards, and falling into a Line aſtern of him, than by Wearing immediately, becauſe he then paſſed by, not only the Five Ships, but the *Hercules* and *Real* too; and that was better than Wearing where he was.

Q. Did not the *Royal Oak*, engage the Second Ship, which was coming up? You ſaid, ſhe engaged Half an Hour, and then hauled up.

A. She hauled up upon our Weather-Quarter.

Q. Did you ſee her fire, after ſhe hauled off from the Firſt Ship?

A. Yes; ſhe fired upon the Enemy after that, but at a great Diſtance.

Q. Was ſhe not then nearer the Enemy, than the *Rupert* was?

A. No; ſhe was not, only the firſt Half-hour.

Q. Did the *Royal Oak*, or you, begin to engage the Two headmoſt Ships firſt?

A. The *Royal Oak*.

Q. What was the Reaſon of that?

A. Becauſe ſhe was neareſt to them then.

Q. How far did the Headmoſt of the Two Ships get before your Beam?

A. The Headmoſt was never before our Beam; ſhe was much about upon our Beam.

Q. How was the Second Ship?

A. About a Cable's Length aſtern of her.

Q. How was the *Royal Oak*?

A. I believe, ſhe was Four or Five Points upon our Weather-Quarter.

Q. Was the *Royal Oak* then engaged?

A. She

A. She kept Firing upon our Weather-Quarter.

Q. How many Points was ſhe upon your Quarter?

A. About three or Four Points.

Q. Did you at that time, or at any other time, hear Captain *Ambroſe*, or any of your Officers, or People, complain of the *Royal Oak*'s not doing her Duty, in not coming nearer to you?

A. I did not hear Captain *Ambroſe* complain of it; I was but once upon the Quarter-deck for about a Minute.

Q. Did you yourſelf never make an Obſervation of her not doing her Duty?

A. Yes; I obſerved ſhe did not do her Duty: She was not ſo near as we were; but might have been as near.

Q. To whom did you expreſs this?

A. It was in my own Sentiment; I never expreſſed it to any body.

Q. Did you ſee the *Cambridge* come and engage the Enemy, when you did?

A. Yes; ſhe came down upon our Starboard-Quarter.

Q. Did ſhe engage to Windward, or to Leeward, of you?

A. She was about Two Points upon our Lee-Quarter, and aſtern withal.

Q. What Diſtance was ſhe from you?

A. About Two Cables Length; ſhe fired Two or Three Broadſides, and then ſhe diſappeared; I don't know what became of her afterwards.

Q. Do you think, any of the Holes in your Sails were made by Grape-ſhot?

A. I can't tell; I don't know, that any Grape-ſhot came on board.

Q. Do you think, that a Ship that has Five or Six Men killed, and Nineteen or Twenty wounded; and her Maſt ſhot through; muſt not be nearer to the Enemy, than a Ship, which had no Men killed, very few wounded, and her Maſts not hurt?

A. That might be owing to Chance, in pointing the Guns.

The Judge-Advocate obſerved to the Member, who aſked this Queſtion, That the Circumſtances of the Maſt being ſhot through, and the Number of Men killed and wounded, related to the *Dorſetſhire*.

Then the Queſtions delivered in by the Proſecutors for the Crown, were asked; *viz.*

Q. When the Admiral ſtood to the Northward, on the Starboard-tack, after Wearing, in the Evening; In what Station was the *Rupert*?

A. The Second Ship aſtern of the Admiral; the *Dorſetſhire* between her and the Admiral.

Q. What Ship was next aſtern of the *Rupert*?

A. I don't juſtly know; but I think, it was the *Eſſex*.

Q. Do you know how many Shot the *Rupert* received in her Hull and Maſts, in that whole Day's Action?

A. Juſt after we wore, I know of one we received juſt under the Larboard Cheſt-tree, which went through the Larboard-ſide.

Q. Did it go through both Sides?

A. No; it did not go through the Starboard-ſide; but, poſſibly, it might have gone through one of the Ports; the Splinter wounded a Man; there was one Shot went through the After-Part of the Booms; that's all I know of.

Q. Was this before or after Wearing?

A. Both after Wearing.

Q. Did the Admiral, and his Diviſion, in ſtanding to the Northward after Wearing, paſs to Windward, or to Leeward, of the *Marlborough*?

A. The Admiral, *Dorſetſhire*, and We, paſſed to Leeward of the *Marlborough*: When we paſſed under her Stern, ſhe was about Two or Three Cables Length to Windward of us; and her Head then to the Northward, towing off.

Q. Did any other Ships paſs to Leeward of her?

A. I believe, moſt of the Ships paſſed to Leeward of her; but I can't ſay particularly.

Q. Did Captain *Ambroſe* ever ſend for your Journal, and direct you to write it over again, according to his dictating?

A. He never did.

Q. Did Captain *Ambroſe* ever in Perſon, or by any Agent of his, interfere with your writeing your Journal?

A. No; I copied mine out of the Log-Book.

The Proſecutor for the Crown delivered in Two Queſtions in Writing to the Court, which he deſired might be aſked the Witneſs; but the Court deferred the ſame, till their next Meeting.

Priſoner aſked,

Q. When we got within Point-blank, do you believe, it was poſſible to have carried the Ship nearer the Enemy, than I did?

A. We might have gone paſt them, if we had made more Sail: Conſider, you kept edging away, and they kept edging away: You could not have gone nearer to them, unleſs you had made more Sail, and gone ahead of them; and then the Conſequence would have been, that we muſt be cut off from our Fleet.

Court.

Q. Could you have done it?

A. Yes; we might have done it; I am ſenſible we could have made more Sail; but, if we had, we muſt have ſtretched ahead of them; and then we muſt have been cut off from our Fleet.

Priſoner aſked,

Q. Do you remember any thing of a White Flag, or not, at the Admiral's Fore-topmaſt-head? Or whether the Signal for the Line was hauled down, or not?

A. I don't remember any thing of it, or of

the Signal for the Line, whether it was hauled down, or not.

Q. Did I never haul off from the Enemy?

A. No.

Q. Do you, or do you not, believe, that if I had not hauled off for the Admiral, but continued engaging, as I was athwart their Forefoot, whether, or no, I ſhould not in a little time have been on board of the Headmoſt, or have ſhot in between thoſe Five Sail, and the *Real* and *Hercules*, and have been jammed in between them?

A. I can't ſay any thing to that; but I am ſenſible, if Captain *Ambroſe* had continued the Courſe he then ſteered, edging upon thoſe Five Ships, as they ſteered for their Admiral, he muſt have been jammed in between them and the *Hercules* and *Real*, if they had fallen into Lee-ward of thoſe Two Ships.

The Witneſs was ordered to attend the Court at their next Meeting; and *Robert Langton* was alſo ordered to attend at the ſame time.

Then the Court adjourned to Thurſday *Morning next, at Half paſt Eight o'Clock.*

The Ninth Day's Sitting upon Captain AMBROSE's *TRYAL,*

On Board His MAJESTY's *Ship the* London, *at* Chatham,

THURSDAY, *October* 31ſt, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, as were on *Tueſday* laſt.

The Marſhal brought in the Priſoner: And the Witneſſes were ordered to be called in.

Lieutenant *Williams* was directed to be called in again, in order to anſwer the Two Queſtions, which were delivered in by the Proſecutors for the Crown on *Tueſday* laſt.

Lieutenant *Williams*, of the *Rupert*, called in, and ſworn.

Q. Did you at any time, and when, tell Lieutenant *Lloyd* or Lieutenant *Long*, of the *Berwick*, That Captain *Ambroſe* had ſent for the Journals of the Officers of the *Rupert*, and ordered, that they ſhould be wrote over again, according to his dictating?

A. No; I never did ſay ſo.

Q. Are you ſure of it?

A. I am ſure, I never did to my Knowlege; I never had any Reaſon to ſay ſo, becauſe Captain *Ambroſe* never directed me in my Journal: If I ever ſaid any thing like it, it muſt be when I was in Liquor; and I never was in Liquor, while I was in the Ship, above two or three times: All that I ſaid to Mr. *Lloyd*, who was Lieutenant of the *Berwick*, when he ſaid, He was ſurpriſed my Journal derogated ſo much from the Truth, was, that I copied it from the Log-Book. This Lieutenant *Long* has expreſſed a great deal of Friendſhip for me: He lately came to me, and ſaid, My dear Friend *Williams*, I am ſurpriſed you ſhould come home, to give Evidence for that Blackguard *Iriſh* Scoundrel, or Raſcal, *Ambroſe*; and made uſe of very abuſive Language; though, at the ſame time, his Mother is only an Oyſter-Woman, and ſells Oyſters upon *Goſport-Beech*: As he has ſcandalized me to this Degree, it is only a juſt Retaliation againſt him.

Court. As you are an Officer, Take care to ſpeak nothing but the Truth; for you may be ruined elſe: Conſider, you have a Commiſſion.

Witneſs. I'll ſpeak the Truth: But, as to my Commiſſion, I don't value it; for I can get my Bread any-where.

Court. Behave yourſelf with Decency; you ſeem to deſpiſe your Commiſſion; you ought to value it, and muſt be made to value it.

Witneſs. I don't deſpiſe it, neither.

Q. What did Lieutenant *Long* ſay farther about your Journal?

A. When he ſaid, My Journal differed very much from every-body's in the Fleet; and that he wondered at it; my Reply to him was, That I copied it from the Log-Book; and that, whether or no that was altered, I could not ſay; but it was not, to my Knowlege.

Q. Did you, or did you not, at any time, and when, declare to Captain *Hawke*, or Lieutenant *Long*, That Captain *Ambroſe* was guilty of great Miſbehaviour in the Day of Engagement, or to any ſuch, or what, Effect?

A. I don't remember, that I ever expreſſed a Syllable tending that way concerning Captain *Ambroſe*.

Priſoner aſked,

Q. Did we not part with one another on ſome Diſguſt, having reprimanded you for ſomething I thought not right?

A. Yes; but that does not make me falſify myſelf: I did not behave in ſuch a manner as I ought to have done, being Half an Hour longer out of the Ship than I ſhould have been: Indeed, I went on Shore without Leave.

Q. Did I ever after ſee you, or converſe with you, till ſince I was made a Priſoner?

A. Yes; I have ſeen and ſpoke to you ſince; but only once: I ſaw you once ſince between *Vado* and *Savona*, as you was walking with Mr.

Le Cras, your firſt Lieutenant; but nothing farther paſſed than, Your humble Servant.

Q. Have you heard, or do you not know, That this *Long* was Three Hours cloſeted with Mr. *Leſtock*, when he came home?

A. Yes; I heard him ſay himſelf, That he was Three or Four Hours with Mr. *Leſtock*.

Q. Pray, repeat to the Court the Converſation you had, in relation to that Blackguard *Iriſh* Scoundrel, meaning me.

A. When I firſt ſaw Mr. *Long*, he ſaid, Mr. *Williams*, What are you come home about?

Court.

Q. Speak out.

A. I will ſpeak out:—He ſaid, I am very much ſurpriſed to hear you are come home on Account of Captain *Ambroſe:* My Reply to that was, That I did not come home intirely upon his Account, but chiefly upon my own Account; and had no other Opportunity or Way of coming home, but by requeſting Captain *Ambroſe* to take me home, as he did the other Officers, who were with him in the Engagement.

Q. Was that the whole Converſation?

A. That was the principal Part; the other was only Tautology.

Priſoner.

Q. Did he not ſpeak of my being an *Iriſh* Scoundrel?

A. He called Captain *Ambroſe* an *Iriſh* Scoundrel, Blackguard, Villain, Raſcal, and, in ſhort, all the vile Names he could think of.

Q. Did you, or did you not hear, That the People of Mr. *Leſtock*'s Ship were to be preferred, the Officers to be made Captains, and the Midſhipmen Lieutenants; and Mr. *Leſtock* to go out again to command in the *Mediterranean*, provided they could have me hanged?

A. I never heard any ſuch thing in my Life.

Then he withdrew.

Samuel Joblin, Captain's Clerk of the *Rupert*, was called in, and ſworn.

Q. Where was you quartered?

A. In the Fore-Magazine.

Q. Declare what you know, in relation to Captain *Ambroſe*'s Behaviour.

Priſoner. This Man was in the Magazine, and can know nothing of the Action; I only call him to give an Account of my Things, of which he took an Inventory; and how they were ſtowed in the Gallery.

Court. You'll aſk him what Queſtions you think proper.

Priſoner aſked,

Q. I deſire to know, Whether I did not clear the Ship, and make my Will, and direct how my Officers ſhould diſpoſe of my Affairs; and whether you did not take an Inventory of my Things?

A. I took an Account of all Things.

Q. Declare to the Court, how my Things were ſtowed; and, whether it was poſſible for any human Creature to get into the Stern-Gallery?

A. All Captain *Ambroſe*'s Things, that could be ſtowed in the Stern-Gallery, were ſtowed there; and the reſt were carried down: There was not Room for any Perſon to go into the Stern-Gallery: We were obliged to lift the Saſhes up, to put them out, to ſtow them one upon another.

Court aſked,

Q. Were your Quarter-Galleries filled alſo with the Furniture?

A. No; only the Stern-Gallery.

Priſoner aſked,

Q. Have you kept my Books?

A. Yes.

Q. How long was *Samuel Anthony* Cook of the *Rupert?*

A. Ever ſince *April*, 1741. I can't ſay exactly the Day of the Month.

Priſoner. I mention this, becauſe my Steward made a Miſtake, which he is very ſorry for: For he ſaid, He believed *Anthony* was Cook not above a Year and an Half; and it might be thought, he might be made Cook by me to ſerve a Turn.

Q. You have wrote out the Quarter-Bills, Was he always quartered at the Helm in the Quarter-Bills?

A. Yes.

Then he withdrew.

The Priſoner then requeſted of the Court, That the Depoſitions in behalf of the Crown might be inſpected into, to ſee whether it was the Stern-Gallery, or Quarter-Gallery, that the Witneſſes ſwear he ſtood in, when the *Royal Oak* hailed the *Rupert*, that he might make an Obſervation accordingly in his Defence; and the Court agreed, That he might have what Information the Minutes, taken by the Judge-Advocate, could give him in that reſpect.

Lieutenant *Le Cras*, Firſt Lieutenant of the *Rupert*, was called in, and ſworn.

His Depoſition read.

Lieutenant Edward Le Cras, *late Lieutenant of his Majeſty's Ship the* Rupert, *at the Time of the late Engagement in the* Mediterranean, *between his Majeſty's Fleet, and the Combined Fleet of* France *and* Spain, *on the* 11*th of* February, 1743. *maketh Oath*;

THAT, when Admiral *Mathews* made the Signal for the Line of Battle ahead, in the Morning of the aforeſaid Day, the *Rupert* got into the Line, and continued in it; and did not, during any time, while that Signal was flying, withdraw from the Line, and lie to Windward of it.

That the *Dorſetſhire* and *Eſſex* were ſtationed between the *Marlborough* and *Rupert*, and were to Windward of the *Rupert*, and began to fire quickly after the Admiral.

That

That the *Rupert* bore down at the ſame time the Admiral did, and brought to in the Line; and, juſt after ſhe brought to, the *Real*'s Second aſtern bore away before the Wind: Upon which the *Rupert* ſtood after her: Whereupon ſhe hauled her Wind again, and run cloſe under the *Spaniſh* Admiral's Lee-Quarter; and then the *Rupert* brought to again, and lay with Topſails aback, to wait for the Five *Spaniſh* Ships aſtern, that were coming up, which were then about Four or Five Miles diſtant, and did not get up with the *Rupert* till about Three o'Clock; and then ſhe began to fire at them; but not till ſome time after they had fired at her.

That it was not poſſible for the *Rupert* to get near enough to the *Real*, and her Second, to do Execution, without being between Two Fires, and breaking the Line; becauſe ſhe muſt have gone between the *Dorſetſhire* and *Eſſex*, and the *Spaniſh* Admiral's Second, and been expoſed to their Fire.

That a few Guns were, at firſt, fired at the Five *Spaniſh* Ships from the *Rupert*, when out of point-blank Gun-ſhot; but, when Captain *Ambroſe* ſaw that, he ordered immediately to ſtop Firing; and, in a little time after, ordered a Gun to be fired from each Deck on a Point-blank, which, he ſaw, did not reach; and after that another, which he found reached the Enemy; then he ordered to fire away, though the Enemy had fired ſome time at the *Rupert*; and their Shot went over her, before ſhe began to fire at all.

That, when the *Rupert* engaged, the Five ſternmoſt *Spaniſh* Ships were ſteering for their Admiral; and, when the *Rupert* began to engage them, they edged away; but, if they had continued their firſt Courſe, they muſt have been cloſe along-ſide the *Rupert*.

That the *Rupert* engaged the ſternmoſt Ships of the Enemy, about the time the *Marlborough*'s Maſts fell; the Headmoſt of thoſe Ships being then come up within about point-blank Shot of the *Rupert*; and ſhe continued engaged with them, while the Fireſhip was going down to the *Real*.

That, when the Fireſhip blew up, ſhe was not about Half a Mile diſtant from the *Rupert*, and was right ahead; and, at the ſame time, the Five Ships of the Enemy were upon the *Rupert*'s Starboard-Quarter.

That, about Five o'Clock, the Admiral wore to the Northward; upon which the *Rupert* ceaſed Firing, hauled her Wind, and paſſed to Windward of the Admiral and *Dorſetſhire*, and wore round after the *Dorſetſhire*; and was then again engaged with the *Spaniſh* Ships, in paſſing by them.

That this Deponent did not ſee any Signal of Diſtreſs made by any Ship; nor doth he know, that the Admiral made any Signal relating to the *Rupert*, or ſent any Order to her, during the Engagement: Nor did he hear the *Rupert* hailed, from the *Royal Oak*, during the Engagement.

That, to the beſt of this Deponent's Judgment, Captain *Ambroſe*, during the Engagement, acted agreeable to the Naval Inſtructions and Diſcipline; and behaved with Conduct and Courage; and ſeveral times expreſſed his Uneaſineſs, that the Enemy's Five Ships were ſo long coming up.

E. Le Cras.

Sworn before me, this 20th Day of *Sept.* 1745.
Cha. Fearne, Ju. Ad.

And he declared the ſame to be true.

Q. Where was you quartered?

A. Upon the Upper-deck, from the Main-maſt aft.

Q. You have declared in your Depoſition, That you bore down ſoon into a Line with the Admiral.

A. Yes; we were, at firſt Steering, almoſt upon a Wind; when the Admiral, on a ſudden, put his Helm hard aport, and wore round.

Q. Where was you, then?

A. I was then by the Binnacle, ſetting the *Real*, to ſee whether we were ahead of her, or not: And ſhe was upon our Beam, when Admiral *Mathews* put his Helm aweather.

Q. As you went down into the Line, Did you not, before you got into the Length of the Line, ſee the *Royal Oak* engaging with a *Spaniſh* Man of War?

A. No.

Q. Did you not ſee her engaging, ſoon after you got into the Line?

A. No; ſhe did not engage any Ship for a conſiderable time after we got into the Line.

Q. Take care what you ſay—Are you ſure of it?

A. I am very ſure of it.

Q. I hope you will ſpeak nothing but the Truth.

A. I have a great Regard to that; and I will ſpeak nothing but the Truth.

Q. Where was the *Royal Oak?* Did you ſee her?

A. When we firſt got into the Line, I can't ſay I ſaw her; but I ſaw her ſoon afterwards.

Q. You ſay, It was ſoon after you got into the Line, that you ſaw her?

A. Yes; it might be about a Quarter of an Hour—The firſt time I ſaw her, was out of the Ward-room-Window, when we edged down after the *Hercules*.

Q. Where was ſhe, then?

A. Near right aſtern of us, but rather, if any thing, upon our Larboard-Quarter; but very little upon the Quarter.

Q. What Diſtance was ſhe from you, when you ſaw her firſt?

A. I believe, about Two Cables Length, or rather nearer.

Q. Was ſhe not engaging, then, when you ſaw her?

A. No.

A. No.

Q. Did you not ſee one of the *Spaniſh* Ships about Half a Mile ahead of the other Four?

A. No.

Q. Were they all coming up, in a cloſe Line?

A. The greateſt Diſtance ſeemed to be, between the Second and Third; I could not perfectly diſtinguiſh, as they came up near in a Line with us; for they were very little upon our Lee-Quarter—I could not ſee much Difference between the Diſtance of all of them—But if there was any Difference, the greateſt Difference was, between the Second and Third Ship.

Q. How long did you lie in the Line, after you hauled up from the *Hercules*, before you bore away?

A. I can't ſay how long—It was not very long. At that time, I was at my Quarters, under the Half-deck; and could not ſee, that we bore away: But I am ſure, by the Poſition of the Ship, we muſt have bore away.

Q. What o'Clock was it, when you bore away?

A. I can't tell—We had no Bell; nor had I any Watch—I can't tell what time of the Day it was.

Q. Did you ſee the *Real*, and the other Ships, that were engaged, about the time you bore away the Second time?

A. I ſaw her a little before the Admiral was engaged, and preſently after he began to engage.

Q. At the time you bore away, did you ſee her?

A. I did not ſee her immediately, when we bore away—I ſaw her a little before.

Q. How long before you bore away?

A. I can't ſay—Perhaps about a Quarter of an Hour, before we bore away the Second time.

Q. Was Mr. *Mathews* engaging her, when you ſaw her then?

A. Yes.

Q. In what Condition was the *Real* then? Was ſhe diſabled?

A. She had her Main-yard ſhot away; the Yard-arms hung upon the Gunnel.

Q. Conſider what you ſay: Are you ſure of it?

A. I took particular Notice of it—And I ſaid to our Officers, upon Deck, The *Real* muſt ſoon give up; having Two Ninety Gun Ships upon her.

Q. About what time was that?

A. About Three-quarters of an Hour, or an Hour, after the Admiral began to engage.

Q. Can't you tell what time of the Day it might be?

A. It might be about Two o'Clock—For Mr. *Mathews* began to engage about One o'Clock.

Q. Was this before the *Marlborough* loſt her Maſts?

A. Yes.

Q. Were the *Dorſetſhire* and *Eſſex* engaging the *Hercules*, at that time?

A. They were engaging, and it muſt be her, the Ship aſtern of the *Spaniſh* Admiral; for they had no other Ship to engage.

Q. Were they within point-blank Shot?

A. I can't ſay—I ſaw the *Hercules*'s Shot go a good Way over the *Dorſetſhire*, and ſome reached the *Eſſex*—As to Point-blank, I can't ſay.

Q. Were they near enough to do Execution?

A. I can't ſay—They were not ſo near, as they might have been—I ſaw the Enemy's Shot that were fired at them; but I did not ſee Their Shot.

Q. What Diſtance was you from the *Hercules*, when you bore away, the Second time, for the Enemy?

A. About a Mile from her.

Q. What Diſtance was you, then, from the Ships aſtern of you?

A. I believe, we muſt be Two Miles, or a Mile and an Half.

Q. How might the *Hercules* bear from you?

A. About Two Points, or rather more, upon our Lee-Bow.

Q. How had you the Wind then?

A. The Wind was large, well aft upon the Quarter.

Q. As you was but a Mile from the *Hercules*, Suppoſe you had made Sail, and ſhot up to her?—You ſay, in your Depoſition, You muſt have run thro' the Fire of the *Dorſetſhire* and *Eſſex*: Do you think, they would not have ceaſed Firing?

A. I can't tell that.

Q. How was the *Dorſetſhire?*

A. A little to Windward of the Line.

Q. How far was the *Eſſex* to Windward of you?

A. About Two Points, or more, upon our Weather-Bow.

Q. At what Diſtance?

A. About Four Cables Length.

Q. As thoſe Ships were not near enough to do Execution, their Firing ſignified nothing.

A. I don't ſay they were not near enough to do Execution.

Q. How long was it, from the Second time you bore away, till you had an Opportunity to engage the *Spaniſh* Ships aſtern?

A. I believe, about an Hour.

Q. Did you ſee the *Marlborough*, juſt before you engaged?

A. No; I don't know, that I ſaw her juſt before.

Q. Did you ſee her afterwards?

A. Yes, Some of our People ſaid, The *Real*'s Maſts were gone: Upon which, I ſtepped upon the Gangway, and leaned a good way to Lee-ward, before I could ſee her; and then I ſaw it was the *Marlborough*'s Maſts were gone; and we had juſt then began to engage.

Q. What Ship was you then engaged with?

A. The Headmoſt of the Five.

Q. Do you make a Diſtinction between Engaging, and Firing?—I call Engaging, being within Point-blank, near enough to do Execution.

A. Yes; there is a Diſtinction, to be ſure. We fired a few Guns, out of Point-blank.

Q. Was it when you was only firing, or engaging, that you ſaw the *Marlborough*'s Maſts gone?

A. We were then engaging, when I obſerved the *Marlborough*'s Maſts to be gone—We had fired a few Guns before that.

Q. How near was you, then, to the Enemy?

A. I believe, about Three Cables Length.

Q. How long did you continue engaging ſo?

A. About an Hour, or an Hour and an Half.

Q. In that time, no doubt, there was a great deal of Damage done, in that cloſe Engaging—You engaged Two Ships.

A. Yes; we pointed our Guns at Two Ships: But it was as much as ever we could do, to point our Aftermoſt-Guns at the Second Ship.

Q. Where was the *Royal Oak*, when you engaged?

A. Upon our Larboard-Quarter.

Q. Where was the *Royal Oak*, when you pointed your Aftermoſt-Guns at the Second Ship?

A. I did not ſee her, then.

Q. So you did not ſee the *Royal Oak*, then? Did you ſee her engage?

A. Yes; I ſaw her ſeveral times in the Day; but not then.

Q. Did you, or the *Royal Oak*, fire firſt upon the Enemy?

A. The *Royal Oak* did.

Q. As you was cloſely engaged, pretty near an Hour and an Half; declare, to the Court, what Damage you had done to your Ship, in her Hull, Maſts, Yards, and Rigging, before Wearing?

A. I don't know, really, at that time—But I heard, That a Shot took the Barricado of the Booms, and another Shot took the carved Work of the Windows; and, I believe, the Wind of the Shot drove the Window in.

Q. When was this?

A. Before the Wearing.

Q. Was it the Quarter-Windows?

A. The Ward-room-Windows.

Q. Was it on the Starboard-Quarter?

A. Yes.

Q. What other Shot had you, on the Starboard-ſide?

A. Some Shot ſtruck the Starboard-ſide, but I can't tell how many.

Q. What Damage was done to the Maſts and Rigging?

A. I don't know—I was under the Half-deck, and don't know what Shot ſtruck the Rigging.

Q. Were there any Men killed, or wounded?

A. There were ſome wounded.

Q. What, before you bore away?

A. Yes—I ſaw Two carried off the Upper-deck.

Q. You ſay, When the *Dorſetſhire*, and *Eſſex*, were firing upon the *Hercules*, you was a Mile from the *Hercules:* At that time how far was the *Eſſex* from you?

A. About Four Cables Length, or better; and better than Two Points upon our Weather-Bow.

Q. Was that a proper Diſtance for your Ship to have been from her Leader? For, if you had been at a proper Diſtance from her, you would have been nearer to the *Hercules*, than ſhe was.

A. We were then waiting for the Five Ships that were coming up.

Q. Do you remember any thing of a Conſultation between Captain *Ambroſe* and his Officers, when you firſt brought to, in the Line?

A. No.

Q. Did you not hear him ſay, He had a good Mind to break the Line, and go down to thoſe Ships?

A. No.

Q. Nor that Captain *Ambroſe* was told, He was in a good Line, and had no Occaſion to break it?

A. It was ſaid, We were in a good Line; and Captain *Ambroſe* expreſſed Uneaſineſs, that he could not engage.

Q. Did you hear nobody ſay, to Captain *Ambroſe*, That he was in a Line; and, if he bore down towards the Enemy, to break the Line, he was the beſt Judge, whether he could anſwer it, or no?

A. I remember ſpeaking, that we were in the Line; and Captain *Ambroſe* was very uneaſy, that the Five Ships did not come up faſter: And I ſaid to him, They will ſoon be up; for they had their Foreſails, and Top-gallant-ſails, ſet, and were about Two Miles and an Half, or Three Miles, from us—The *Hercules* was juſt then bearing away, when we looked at them.

Q. In what manner did you obſerve your Ship to be in a Line? Was ſhe as far to Leeward, as the Admiral?

A. Yes.

Q. How do you form that Judgment? Were all the Ships ahead of the Admiral, and the Ships aſtern, in One?

A. The Ships ahead, were all in One, directly: For, when the Words were ſpoke about our being in a Line, we were obſerving, how well we were in it, by the Ships from the *Marlborough* ahead being in a Line with each other; and the *Marlborough*, preſently after, went to Leeward.

Q. What, Do you ſay all the Ships, ahead of the *Marlborough*, were in a Line with each other?

A. I can't ſay, as to all of them: I only ſpeak, as to ſeveral of the Admiral's Diviſion from the *Marlborough* ahead.

Q. Did you lie to, at the firſt of your Bringing up, in a Line with the Admiral?

A. I don't know, whether the Main-yard was ſquared, or not—The Fore-yard, I know, was not—Soon after that, the *Hercules* bore away; and we bore away, alſo.

Q. At the time you obſerved the *Royal Oak* upon your Larboard-Quarter, Was it before, or after, you bore away after the *Hercules?*

A. It was after we bore away, and hauled up again.

Q. When you hauled up again, Did you lie to, or continue under your Topſails?

A. I can't tell—I was not upon Deck then.

Q. When you ſaw the *Royal Oak* upon your Larboard-Quarter, How had you the Wind?

A. A good deal abaft the Beam; I am certain.

Q. Are you ſure, when you brought up the Second time, you had the *Marlborough*'s Maſts in One?

A. I did not ſee her then; I was not upon Deck—But we did not bear away Two Ships Length, before we hauled up again.

Q. When you bore away, and engaged the Two Headmoſt of the Enemy's Ships cloſeſt, Can't you remember, that, at the time of that Action, ſome Shot ſtruck your Ship's Hull?

A. I don't know it, myſelf; I did hear it—I think the Carpenter ſaid, There were Two between Wind and Water, on the Starboard-ſide.

Q. Do you remember the particular Part of the Ship they ſtruck?

A. I can't ſay.

Q. Did not the Carpenter bring you an Account, what Part of the Ship they ſtruck?

A. He brought me an Account, in a Piece of Paper, That there were Two on the Starboard-ſide, between Wind and Water, beſides others on the Starboard-ſide: But I can't remember where they were.

Q. Did not the Carpenter, in the Note he brought to you, expreſs what Part of the Ship thoſe Shot ſtruck?

A. I don't remember—To be ſure he did; but I don't remember it.

Q. What time of the Action did your Spritſail catch Fire?

A. Juſt about the time of Wearing.

Q. By what Accident?

A. It was by a Wad from the *Eſſex* — I ſaw the Wad fall into the Sail; and I hailed the *Eſſex* from the Forecaſtle, by Captain *Ambroſe*'s Directions, with a Trumpet, to tell him not to fire into us.

Q. Where was the *Eſſex* then?

A. Broad upon our Larboard-Bow.

Q. What Ship do you imagine the *Eſſex* fired at then?

A. I think the *Eſſex* was firing at the *Real*, as the *Real* came open with the Stern of the *Dorſetſhire:* There was nothing elſe for her to fire at.

Q. Did you ever hear the *Eſſex* hail the *Rupert*, to let her know, her Spritſail was on Fire?

A. No; I called to the *Eſſex*, with a Speaking-Trumpet, to deſire her not to fire upon us: But I did not hear any Anſwer.

Q. What Diſtance was the *Eſſex* from you then?

A. She was very near—She might be a Cable's Length, or Two—I did not take notice of the particular Diſtance—She was near enough, as I thought, to be hailed—And Captain *Ambroſe* ordered me to take the Trumpet, and hail her.

Q. Was there any Danger of her being on board of you?

A. No; there was not.

Q. Did you go ahead, or aſtern, of the *Eſſex?*

A. We were then wearing; and ſhe fell aſtern of us, and we fell aſtern of the *Dorſetſhire.*

Q. Had the Admiral the Signal out for the Line then?

A. I can't tell.

Q. When you wore, Did you go to Windward, or to Leeward, of the *Marlborough?*

A. We paſſed to Leeward of her, a little before we wore; about a Quarter of an Hour—She was towing to the South-Eaſt, with Boats ahead, about Two Cables Length to Windward of us, when we paſſed her—We were then ſtemming for the *Real.*

Q. Did you ſee the Fireſhip, when you paſſed the *Marlborough?*

A. When we paſſed her, I heard Three Cheers; and I asked what was the Matter: And ſome of the Men ſaid, It was the Fireſhip on board the *Real.* I then got up upon the Starboard-Gangboards, leaned to Leeward, and ſaw the Smoke of the Fireſhip upon the Water, which was then near right ahead of us, about Four or Five Cables Length diſtant.

Q. Was the Admiral before the Wind then?

A. I can't tell, as we were then engaged—As they ſaid the Fireſhip was on board the *Real*, I went to look at her; and ſaw the Fireſhip blow up, and the Smoke upon the Water.

Q. How far was ſhe from you then?

A. I believe, about Half a Mile—I went upon the Gangboard, and ſaw the Fireſhip, when ſhe blew up.

Q. How did the Admiral then lie, with your Ship?

A. I did not ſee him, till he was before the Wind, a little before we wore; becauſe we were engaging, and I at my Quarters.

Q. When you obſerved him, Was he to Windward, or to Leeward, of you?

A. I believe the Admiral, when I obſerved him, was rather to Windward of us.

Q. At the time the Fireſhip blew up, How did the Admiral bear?

A. I did not ſee him, till I ſaw him before the Wind.

Q. In

Q. In the Evening, when you ſaw the Admiral wear, what Diſtance was you from the Admiral then?

A. I did not ſee him wear: — The Admiral wore a long time before we did, and came down ahead of us.

Q. Did he haul his Wind in Wearing?

A. I ſaw him before the Wind; but I did not ſee him wear.

Q. A Ship can't get before the Wind without Wearing.

A. But he might have been wore a conſiderable time before.

Q. How did the *Namur*'s Head lie, when you ſaw her?

A. She was ſteering right down for the *Real.*

Q. At what time was that?

A. About a Quarter of an Hour before we wore.

Q. Between that time, and the time you wore, What did you ſee the Admiral doing?

A. I did not ſee him for ſome time after that, till we left off Firing; when I ſaw him out of the Lee-Port.

Q. What Diſtance was he from you then?

A. Not a great Way; he might be about a Cable's Length and an Half.

Q. How were the Sails trimmed then?

A. His Larboard-Braces were hauled in, ſtanding to the Northward.

Q. Were they ſharp?

A. I can't tell whether they were ſharp or not.

Q. Could not the Admiral have weathered you then, if he had kept his Wind?

A. Not when I ſaw him the Second time.

Q. Where was he then?

A. Upon our Lee-Beam, or thereabout: — I believe we hauled up, and ſtood away, to give the Admiral room; and left off Firing, otherwiſe we muſt have fired into him, or he into us.

Q. How far was the Enemy then from you?

A. About Three Cables Length.

Q. And how did they bear from you?

A. About abreaſt: — They had juſt then joined the *Real.*

Q. Then the Admiral muſt have been between you and the Enemy?

A. Yes; he was when I ſaw him; and that made us ceaſe Firing.

Q. At that time, how long had you engaged thoſe Five Ships that joined the *Real?*

A. About an Hour, or an Hour and an Half.

Q. Did no other Ship engage them with you?

A. I believe the *Royal Oak* did; for I looked ſeveral times out of the Stern-Port, during the Engagement, and ſaw her aſtern, and a little upon our Larboard-Quarter.

Q. At what o'Clock did you obſerve the *Royal Oak* engaging?

A. At ſeveral times during the time we were engaged.

Q. Did you never ſee the *Royal Oak* engaged before that time?

A. Yes: — I ſaw her engaged before us, as the Enemy were coming up; they were then upon our Lee-Quarter, and ſhe was right aſtern, or rather upon the Larboard-Quarter, if any thing.

Q. What Ships did ſhe fire at?

A. The Firſt and Second of the *Spaniſh* Ships.

Q. What Diſtance was there between the Firſt and Second Ship?

A. Very little: — I thought the greateſt Diſtance was between the Second and Third.

Q. What Diſtance might the *Royal Oak* be from you at that time?

A. About Two Cables Length.

Q. What was your Ship doing when you was at that Diſtance from her, while ſhe was engaged before you for about Half an Hour?

A. I believe ſhe was engaged about that time before us; but what we were doing then, I can't ſay; but, I believe, we were Yawing, by the different Motions I obſerved in the Stern of the Ship.

Q. Do you remember any thing of the *Royal Oak*'s cloſing up with you, after ſhe had been ſome time engaged, and hailing Captain *Ambroſe*, and deſiring to know why he would not go farther down?

A. No; I don't remember that: — I remember her getting her Fore-tack on board, hauling her Mizen out, and ſhooting up almoſt as far as our Weather-Beam.

Q. At what Diſtance was ſhe from you, when ſhe was upon your Weather-Beam?

A. About a Cable's Length.

Q. Are you very ſure, that the *Royal Oak* hauled up upon your Weather-Beam?

A. Yes, I am very ſure of it: — For I went upon the Quarter-deck, to ask Captain *Ambroſe*, if he ſaw her in that Poſition.

Q. Did you take notice how your Ship's Head lay then?

A. I can't ſay, that I did obſerve it.

Q. Are you ſure, that her getting her Fore-tack on board, hauling her Mizen out, and ſhooting upon your Beam, was not occaſioned by your Yawing, to avoid your falling on board her?

A. I am ſure it could not be that, becauſe ſhe was ſo far from us to Windward, and aſtern withal.

Q. Did you ſee her get her Fore-tack on board?

A. Yes.

Q. Was that before or after you began to engage?

A. Before.

Q. How was ſhe then with you?

A. Upon our Larboard-Quarter, about Two Cables Length.

Q. Between the time of her getting her Fore-tack on board, and getting upon your Beam, How long was it?

A. She was upon our Beam preſently.

Q. What Sail had ſhe then?

A. Her

A. Her Topſails, Foreſail, and Mizen; I can't ſay whether ſhe had her Stayſail, or not.

Q. How much Wind had you then?

A. About as much as would run the Ship about Two Knots an Hour, or better.

Q. How much Time do you think, when a Ship goes Two Knots an Hour, will it take to bring a Ship from Two Cables Length upon your Quarter, to be upon your Beam?

A. I believe, about Half a Quarter of an Hour.

Q. After you ſaw the *Royal Oak* upon your Beam, How long was it, before you began to engage?

A. We began to fire our Guns preſently after.

Q. But when you began to engage them nearly?

A. Between a Quarter, and Half an Hour; I can't be exact.

Q. How long, before you wore, in the Evening, did you engage thoſe Ships cloſely?

A. About an Hour and an Half.

Q. Did the *Royal Oak* remain upon your Beam all that time?

A. No:—I ſaw her again upon our Larboard-Quarter.

Q. How ſoon after you began to engage cloſely?

A. I can't ſay: But I ſaw her.

Q. Did you take ſo much notice of her as to obſerve, from the time you ſaw her upon your Quarter, when you was engaged cloſely, that ſhe was not properly and cloſely engaged, ſo as to give you the Aſſiſtance which a Man of War ought to give to another engaged?

A. I did not take particular Notice of that:—I ſaw her ſeveral times accidentally, as I looked that Way, and ſhe was a little upon our Quarter.

Q. Did you, in that whole Day, hear Captain *Ambroſe*, or any of your Officers, or Petty-Officers, expreſs any Chagrin, that the *Royal Oak* was not doing her Duty that Day?

A. I never did.

Q. When you firſt had the Signal for the Line of Battle ahead, What Diſtance was you from the Enemy?

A. I can't tell.

Q. Did you immediately, upon that Signal, draw into a Line?

A. Yes, immediately.

Q. And was you in a Line with the Admiral, *Marlborough*, *Dorſetſhire*, and *Eſſex*?

A. Yes:—The Ships of the Centre Diviſion were all in a very good Line, and at good Diſtances, as far as I could perceive.

Q. Then, I think, without any Alteration of Signal, the Admiral put his Helm aweather, and bore down for the *Real*?

A. Yes:—I did not obſerve any Alteration of the Signal.

Q. Did thoſe Four Ships, the *Marlborough*, *Dorſetſhire*, *Eſſex*, and *Rupert*, then bear down equally with the Admiral, keeping him upon your Beam?

A. No; he was rather abaft our Beam:—We brought the Admiral rather upon our Quarter, when we bore down; for we ſteered parallel with the Admiral.

Q. When you was to bring up, to be in a Line for Engaging, What Rule had you for Bringing up?

A. I obſerved the *Norfolk*, *Namur*, and *Marlborough*, to be all in a Line with one another; but the *Dorſetſhire* and *Eſſex* brought up before us.

Q. Then, when you had the *Marlborough*, *Namur*, and *Norfolk*, in a Line, you brought up?

A. Yes.

Q. By the Fighting Inſtructions it is ſaid, That, when you are in Fight with the Enemy, you are to keep within Half a Cable's Length of one another,—Was you within half a Cable's Length of the *Eſſex*, when you firſt brought up?

A. No:—We were not within Half a Cable's Length; but, I believe, we were within about a Cable's Length.

Q. When you was ſo brought up, and the *Dorſetſhire* and *Eſſex* were brought up before you, and the Admiral had began the Action, did you obſerve the *Dorſetſhire* and *Eſſex* to fire at the *Hercules*?

A. Yes; I did obſerve them to fire.

Q. Did you obſerve any of their Shot fall ſhort of the *Hercules*?

A. I did not obſerve their Shot; but I ſaw the Enemy's Shot go over the *Dorſetſhire*, and ſome reach the *Eſſex*.

Q. As the *Dorſetſhire* and *Eſſex* brought up rather to Windward of the Line, there muſt be an Opening, to give you a better View of the *Hercules*: Did you then try any Shot at the *Hercules*, to ſee if they would reach?

A. I did not hear any Orders given for Firing at her; and, I believe, no Shot were fired at her; but I am ſure they would not have reached.

Q. The *Hercules* was the Ship immediately aſtern of her Admiral?

A. Yes, ſhe was.

Q. Was ſhe cloſe under his Stern in the Beginning of the Action, or a little under his Lee-Quarter?

A. I think, ſhe was ſome Diſtance from her own Admiral, and abreaſt of the *Dorſetſhire*.

Q. How long after this was it, that you obſerved her to bear away before the Wind?

A. Preſently after we got into the Line:—The *Dorſetſhire* and *Eſſex* engaged, before we got into the Line.

Q. Do you imagine the Cauſe of the *Hercules*'s Bearing away before the Wind was from the Fire of the *Dorſetſhire* and *Eſſex*, or to go upon the other Tack to join the Five Ships coming up?

A. I imagined, and we all ſaid ſo then, to join the Five Ships coming up.

Q. As you are a Seaman, and an Officer, you muſt allow, it would take ſome time for a Ship to wear round; and, conſequently, ſhe muſt be at a greater Diſtance from her own Admiral, than ſhe was before; and that would bring her rather nearer to the *Rupert*, than ſhe was before?

A. Yes; it would; and ſhe was ſo.

Q. Did you then try, if any Shot would reach her?

A. No:—We took her to be then at too great a Diſtance to fire at.

Q. The Cauſe of the *Hercules*'s bearing up again, and running under her Admiral's Quarter, you imagine to have been from your Bearing away after her?

A. Yes; we thought ſo, and ſaid ſo then, on board the Ship:—For, if ſhe had gone to have joined thoſe Five Ships, we muſt have cut her off; we ſhould have been between her and the Five Ships preſently.

Q. Was this coming up of the *Hercules*, under her own Admiral's Quarter, before or after the *Marlborough* loſt her Maſts?

A. I really can't ſay; it was in the Beginning of the Engagement.

Q. When ſhe had ſo ſhot under her own Admiral's Stern, do you think ſhe was open enough to gaul the *Marlborough*?

A. I can't ſay:—I looked at her out of the Gallery, and obſerved her to Leeward, under her Admiral's Lee-Quarter; but whether ſo far as not to gaul the *Marlborough*, I can't ſay.

Q. Do you think ſhe ſhot ſo far under her Admiral's Quarter, as to prevent her bringing her Guns before the Beam, to bear upon the *Marlborough*?

A. I really can't ſay.

Q. Did you obſerve her to fire briskly, as ſoon as ſhe hauled up under her Admiral's Lee-Quarter?

A. Yes:—She fired directly, as ſoon as ſhe hauled her Wind, very briskly; and with all her Sails ſet: And, about that time, I obſerved the *Hercules*'s Main-topſail Yard come down.

Q. Could you diſcern, when the *Hercules* had come under her Admiral's Quarter, whether the *Marlborough* fired at the *Hercules*, or at the *Real*?

A. I can't tell; but I thought ſhe fired at the *Real*.

Q. Did you then obſerve the *Dorſetſhire* fire briskly at the *Hercules* at that Juncture of Time?

A. I can't ſay:—I was juſt then in the Gallery, and did not ſee the *Dorſetſhire*.

Q. It appears by your Situation, as you have explained it to me, that there was no Ship for you to have properly engaged: Therefore, upon the Oath you have taken, when you brought up, and lay in that Situation, Did you not ſee the *Royal Oak* bring up cloſe aſtern of you, and back her Topſails, for fear of your being on board her?

A. No, I did not:—I did not ſee the *Royal Oak*, till the time we brought up from Bearing away after the *Hercules*.

Q. As the Enemy's Ships were a great Way aſtern of you, and you lay in their Track, as they were coming up, and you was in a Situation to make Obſervations all around you, Did you not obſerve, or hear of, the *Royal Oak* engaging a ſingle Ship upon the *Rupert*'s Lee-Quarter?

A. No:—I neither obſerved ſuch a Thing, nor ever heard of ſuch a Thing.

Q. When you was lying in the Track of the Enemy's Ships, what did you do? Did you yaw, back, or wear, or bear down, in order to make the Enemy near you the ſooner?

A. I believe, we yawed, and backed, by the different Poſitions of the Ship; but I was not upon Deck, but under the Half-deck; and therefore did not ſee what was done.

Q. Did you not, in all that time of Yawing and Backing, ſee the *Royal Oak*?

A. Yes; I ſaw her ſeveral times.

Q. What Poſition was ſhe then in?

A. Upon our Weather-Quarter.

Q. Did ſhe back her Topſails, in order to do as you did?

A. I think ſhe had ſome of her Topſails aback:—I obſerved her ſeveral times upon our Weather-Quarter; but I can't ſay I took particular Notice of her Sails; I don't know whether ſhe backed her Topſails, or not.

Q. When the Enemy had come up ſo far as to engage any of our Ships, either the *Royal Oak*, or you, which Ship engaged the Enemy firſt?

A. The *Royal Oak*.

Q. And, upon her engaging the Enemy, Where was ſhe with reſpect to you?

A. A little upon our Larboard-Quarter.

Q. And what Diſtance from you?

A. About Two Cables Length.

Q. When ſhe was ſo engaging the Enemy about Two Cables Length upon your Larboard-Quarter, it muſt neceſſarily have alarmed you: Did you not then look at her?

A. I did then look at her.

Q. What Sails had ſhe ſet?

A. She had her Topſails ſet; but whether they were aback, or not, I can't ſay.

Q. What Sail had the Five Ships that were coming up?

A. All the Sail they could ſet:—Their Top-gallant-ſails, Courſes, and ſome Stayſails.

Q. As I conclude, a Captain of a *Britiſh* Man of War would not fire at the Enemy until he could do Execution: I imagine therefore the *Royal Oak* could not be at a great Diſtance from the Enemy, when ſhe fired at them?

A. I ſaw the Enemy's Shot fly over the *Royal Oak*, and all about her.

Q. By

Q. By the Poſition you deſcribe the *Royal Oak* to have been in upon your Larboard-Quarter, I imagine the Enemy were right aſtern of the *Rupert*?

A. They were near right aſtern of her.

Q. As the Enemy's Shot flew all over the *Royal Oak*, and as the *Royal Oak* was but Two Cables Length aſtern of you, and the Enemy had all the Sails ſet they could croud, I think it could be no long time before they were ſo abreaſt of you as for you to engage them?

A. No; it was not very long.

Q. When the *Royal Oak* was thus firing, and as the Enemy were ſo near you, and almoſt right aſtern, How long was it before the Head-moſt of the Enemy came up along-ſide of you?

A. Upon my Word, I can't tell; I believe about Half an Hour, or a Quarter of an Hour, or ſuch a Matter.

Q. When they were ſo along-ſide of you, Were they within point-blank Shot of you?

A. Before they got up abreaſt of us, as ſoon as any Guns could be brought to bear, Captain *Ambroſe* ordered a Gun to be tried on a Level, to know whether the Shot reached: The Firſt did not reach: Afterwards he ordered another Gun to be fired; and that Shot went ahead of the Enemy, and beyond them; and then we were ordered to fire: I myſelf looked out of the Port, and ſaw the Shot fly ahead of the Enemy; and then we continued firing.

Q. I think you have ſaid, The Enemy were almoſt right aſtern of you; How did you bring the Guns to bear upon them?

A. I imagine they muſt put the Helm aport upon Deck, in order to bring the Guns to bear; becauſe, I am ſure, the Guns did bear upon them: And I ſaw the Enemy bear away, when we fired upon them.

Q. When the Helm was put aport to bring your Guns to bear, How did the *Royal Oak* then bear from you?

A. I did not ſee her then: Before it was put aport, ſhe bore a little upon our Larboard-Quarter.

Q. Did you point any of thoſe Guns your-ſelf?

A. Yes.

Q. And did you not then obſerve the *Royal Oak*?

A. No; I did not ſee her then.

Q. When you fired the Firſt Broadſide at the Enemy, after putting the Helm aport, as you conclude was done, Did you obſerve any Damage done to the Enemy?

A. I ſaw one of their Top-gallant-ſails ſplit; but, whether it was of the Firſt or Second of the *Spaniſh* Ships, I can't tell.

Q. Did the Enemy then do you any Damage at that Juncture? I ſuppoſe you exchanged a Broadſide?

A. Yes; but I don't remember any Damage we received, more than I have already mentioned.

Q. From this Time you kept engaging the Enemy, and they you?

A. Yes.

Q. Did you bring up to the Wind, or did you keep your Ship in the ſame Poſition as you was in, after you put your Helm aport, to bring your Guns to bear?

A. No; we did not continue in that Poſition; for, ſoon after, the Starboard-Guns would not bear upon the Enemy; and then we had Orders to get the Larboard-Guns clear.—I don't know whether we fired the Starboard-Guns once or twice.

Q. When you had got the Larboard-Guns clear, Do you apprehend, that you put your Helm aſtarboard, till the Ship came round to, and brought them Larboard-Guns to bear upon the Enemy?

A. Yes; the Helm muſt have been put aſtarboard; for we brought the Larboard-Guns to bear upon the Enemy, and we fired them; and I ſaw ſome of the After-Guns breeched well forward, to bring them to bear upon the Enemy.

Q. When you had this Larboard-Broadſide lying towards the Enemy, Did you not look out for the *Royal Oak*?

A. I did ſee her, as the Ship was coming to: I ſaw her to Windward out of the Aftermoſt-Port, in the Ward-room on the Larboard-ſide.

Q. Did you fire your whole Larboard-Broad-ſide?

A. I don't know; but my Guns abaft upon the Upper-deck were fired.

Q. Did you fire any more at her from that Side?

A. No; they were loaded again, but not fired from that Side.

Q. When you was firing your Starboard-ſide, Do you think, that, by bringing up round to Port, you could do the Enemy more Damage than by continuing your Starboard-ſide?

A. I imagine that got us nearer to the Enemy, as I believe the Ship muſt have been thrown all aback.

Q. What did you do after you had fired this Larboard-ſide?

A. We immediately brought the Starboard-Guns to bear again, and fired; and we never diſcontinued Firing from the Starboard-ſide after that, till I ſaw the Admiral between us and the Enemy, when I had Orders to leave off Firing.

Q. When you had ſo bore up the Second time, and brought your Starboard-Guns to bear, Did you obſerve in what Poſition you lay with reſpect to your own Admiral?

A. No; I did not ſee our Admiral then.

Q. Then you don't know, whether you was in or out of the Line, whether to Windward, or to Leeward of it?

A. No.

Q. During the time of this Action, that you never diſcontinued Firing, after bringing your Starboard-

Starboard-Broadſide to bear again upon the Enemy, How long was it before you fired?

A. Better than an Hour.

Q. In this Hour, What Sail had you abroad?

A. I don't know.

Q. Do you know what Sail the Enemy had ſet?

A. I believe, they had all their Sails ſet; but I can't ſay whether ſome of them had not hauled up their Mainſails: I believe, we muſt have made ſome Sail; but I can't ſay what.

Q. I ſuppoſe you might go ſometimes farther forward than the Main-maſt during the Action?

A. Our Quarter-deck run quite to the Main-maſt; and I don't know, that I was ever before the Main-maſt, till the Fireſhip blew up.

Q. Did you keep in Action with your Sails full during that Hour?

A. To be ſure, we muſt have kept our Sails full; for I obſerved the Enemy got but very little of us.

Q. What do you think was the Cauſe that the Enemy and you did not near one another during this Hour?

A. Becauſe the Enemy edged away as we did, and we had the Wind almoſt aft.

Q. So in this manner you continued, till you ſaw the Admiral had made the Signal for Wearing?

A. I did not ſee the Signal.

Q. Did you continue ſo, till you ſaw the Admiral wore?

A. Yes; we continued ſo, till we ſaw the Admiral wore, ſteering right down for the *Real*; and we continued firing ſomewhat longer.

Q. In all this Action, had you any Men killed?

A. Not that I know of.

Q. Were any of your Maſts or Yards wounded?

A. I ſaw a Splinter, which one of the Men ſaid was taken off the Foreyard.

Q. Did you ſee the *Cambridge* during the latter Part of the Action?

A. Yes; I ſaw her come down very near to our Starboard-Quarter, and engage: I thought ſhe would have been on board of us.

Q. Did you not ſee her paſs the *Royal Oak*, before ſhe came to you?

A. I did not ſee the *Royal Oak* then.

Q. How many Broadſides do you think the *Cambridge* fired at the Enemy?

A. I believe, not above Two or Three: It was a very little time before I ſaw her ſtanding upon the other Tack; but ſhe might fire, before I took notice of her.

Q. Now, by the Oath you have taken, I hope you'll be very exact, as I take you to be a Man of Honour: Did you never, from the Beginning of the Action, to the End of it, hear the *Royal Oak* hail the *Rupert*?

A. I never did.

Q. Did you ever hear the *Rupert* hail the *Royal Oak*?

A. No; I heard a Noiſe with a Trumpet, and I aſked what it was: Some of the Men anſwered, and ſaid, It was the Maſter hailing the *Royal Oak*.

Q. And you was upon the Upper-deck all the time of the Engagement?

A. Yes, from the Main-maſt aft, the whole time.

Q. When you hauled your Fore-tack on board, and hauled up in order to let the Admiral go to Leeward of you, Are you ſure you was not then to Windward of the Line?

A. I know nothing of the Fore-tack being hauled on board; and I did not ſee the Admiral, till he was before the Wind.

Q. You ſay in your Depoſition, You was never to Windward of the Line?

A. I don't know, that there was any Line at that time: I believe, we were then the leewardmoſt Ship of all.

Q. Don't you think it was a very odd thing for the *Hercules* to deſert her Admiral, when there were Four Ships upon him, when the *Hercules* at firſt bore away before the Wind?

A. I can't tell the Reaſon of it; but ſo it was.

Q. What Diſtance of Time was it from your Hauling up a Second time, after you bore down to the *Hercules*, and your Bearing away to engage the Five Ships?

A. Between a Quarter and Half an Hour, or about a Quarter of an Hour; I can't be exact.

Q. Within that Quarter of an Hour, Did you obſerve the *Real*'s Main-yard carried away?

A. Yes; I did: I obſerved it was down, before we bore away.

Q. At what time was that?

A. About Two o'Clock: It was before we bore away.

Q. When you was engaging the Headmoſt of the *Spaniſh* Ships, How was you then with regard to the Line?

A. I did not obſerve.

Here a Member of the Court ſaying, That the Witneſs contradicted his Depoſition, it was called for: And the Firſt Paragraph of it was read.

Q. When the Admiral aſked you, What Diſtance you was from the *Eſſex*, you anſwered, Two Cables Length?

A. Yes.

Q. And when Captain *Parry* aſked you the ſame Queſtion, you ſaid, A Cable?

A. Yes:—To Captain *Parry*'s Queſtion, I apprehended him to mean, At the time we firſt brought up in the Line; and the Admiral I underſtood to mean, When we brought up after Bearing down towards the *Hercules*.

Q. You

Q. You ſaid, That, in the Beginning of the Day, you was in a good Line with the Admiral:— When you obſerved the Admiral bear away to engage the Enemy, did he upon Bearing away, make any Signal to do ſo.

A. I did not ſee any.

Q. Then how came you to bear away likewiſe, without a Signal?

A. I can give no Reaſon for it:— All the Ships did.

Q. You ſaid, in the Evening, when you ſaw the Admiral wear, or was wore, you hauled your Fore-tack on board, in order to get to Windward of him.

A. I know nothing of the Fore-tack; but we hauled our Wind, becauſe I ſaw the Admiral out of our Starboard-Ports.

Q. Did the Admiral then make any Signal for Wearing?

A. I don't know.

Q. Was not the Enemy then to Leeward of you?

A. Yes.

Q. Was it not as natural for you to have bore away with the Admiral then, inſtead of going ahead of him, and hauling your Wind, as it was for you to have done at the Beginning, the Enemy being then to Leeward of you, and the Admiral making no Signal for Wearing, as you perceived, inſtead of hauling your Wind, and going to Windward of him, which carried you a greater Diſtance from the Enemy?

A. At the time I ſaw the Admiral, I believe, if we had wore, we ſhould not have engaged above One or Two of the *Spaniſh* Ships; but, as we paſſed to Windward of the Admiral, and wore under the *Dorſetſhire*'s Stern, after we wore, we then engaged the *Real*, and all the reſt of the *Spaniſh* Ships, as we paſſed them, in ſtanding to the Northward, and they to the Southward.

Q. How long did the Admiral engage before he ſhot ahead, and hauled off?

A. I don't know.

Q. Was the Admiral engaging the *Real*, when you bore away the Second time, to engage the *Spaniſh* Ships aſtern?

A. Yes; he was then engaged.

Then the Queſtions delivered in by the Proſecutors for the Crown, were asked, as follow:

Q. When the Admiral ſtood to the Northward, on the Starboard-tack, after wearing in the Evening, what Station was the *Rupert* in?

A. The Second Ship aſtern of the Admiral, next to the *Dorſetſhire*.

Q. What Ship was next aſtern of the *Rupert*?

A. I believe, it was the *Eſſex*; but I can't be ſure.

Q. Did the *Rupert* receive any, and how many Shot in her Hull, or Maſts, in that whole Day's Action?

A. I really can't tell how many.

Q. Do you remember the particular Number ſhe received on either Side?

A. No; I don't know.

Q. Did the Admiral, and his Diviſion, in ſtanding to the Northward, after Wearing, paſs to Windward, or to Leeward of the *Marlborough*?

A. I am pretty ſure the *Rupert* did; but I can't tell what other Ships did.

Q. Did Captain *Ambroſe* ever ſend for your Journal, and direct you to write it over again, according to his dictating?

A. No; he never ſaw my Journal, to my Knowlege.

Q. Did Captain *Ambroſe* ever, in Perſon, or by any Agent of his, interfere with your writeing your Journal?

A. No.

The following Queſtions, being now delivered in by the Proſecutor for the Crown, were alſo asked this Witneſs, as follow:

Q. Was you never in a Line with the *Marlborough* and *Real*; or had you never the *Marlborough* and *Real* in One?

A. Never.

Q. Did, or did not, the Miſtake, on board your Ship, that the *Real*'s Maſts were gone, happen by reaſon of your having the *Marlborough* and *Real* in One?

A. They never were in One: The Miſtake was owing to ſome of the Seamen calling out, and ſaying, The *Real*'s Maſts were gone; upon which I ſtept upon the Starboard-Gangway, and leaned over, as far as I could, to Leeward, and ſaw it was the *Marlborough*'s.

Q. What time was that?

A. About Three o'Clock.

Q. When your Spritſail was ſet on fire, How did the Admiral and *Marlborough* bear, with regard to your Ship, and at what Diſtance?

A. I can't ſay directly, where the Admiral was then, but I ſaw the *Marlborough* upon our Larboard-Quarter, or rather upon our Beam, with Boats ahead, towing away.

Q. Did the *Rupert*, at any time, engage to Leeward of the *Marlborough*, when, and for how long time?

A. We paſſed to Leeward of the *Marlborough*, juſt as the Fireſhip blew up, and were then engaging.

Q. When that Miſtake happened of the *Real*'s Maſts ſaid to be gone, inſtead of the *Marlborough*'s, you ſay, you looked over the Lee-Gangway?

A. I ſtept upon the Lee-Gangboard, and leaned over the Barricado, to ſee her, and I ſaw it was the *Marlborough*: The Miſtake might be occaſioned by the Smoke.

Priſoner asked,

Q. Pray tell the Court, the Condition of the Sails: Were the Sails damaged, or not?

A. The Sails were ſo damaged, that we were obliged to unbend them the next Morning.

Q. Do you think, then, or ſince, that there was any better Method to be taken, or that I could have acted better for the Good of my Country, and my Country's Cauſe, than I did.

A. I really think you could not: I believe, you had the Good of the Cauſe at Heart, and did all you could: I did not know any better Methods than what I ſaw you take.

Q. At the time I hauled off from them Five Ships, Do you think, conſidering the little Wind we had, and Diſtance we were from the Enemy, that there was Room enough for me to wear clear of them?

A. I cant ſay as to that; I did not take ſo much Notice.

Q. I aſk you, as an Officer, Had I put my Ship in that Poſition to wear, in caſe I had had Room, would they not have fired into my Bows, and tore us to Pieces, and probably have ſunk the Ship?

A. To be ſure, if you had gone ſtemming towards them, they would have fired into our Bows, and raked us.

Q. If the Admiral had not come down to my Aſſiſtance, ſhould I not have been on board either the Five Ships, or the *Real?*

A. We were ſtemming for the *Real*, before the Admiral came down.

Q. When you wore, how far was the whole *French* Fleet from us?

A. I can't ſay exactly; they were pretty near, I believe, they might be about a Mile and an Half, or Two Miles from us, and were ſtemming directly for the *Spaniſh* Admiral, with all their Sails ſet; and the *French* Admiral was the headmoſt Ship.

Q. What was the Firſt Ship we engaged after we wore?

A. The *Real.*

Q. Was there any Ship between the Admiral and *French* Fleet, but us; that is, the *Dorſetſhire*, *Eſſex*, *Rupert*, and *Royal Oak?*

A. I can't ſay:— There were Two or Three Ships aſtern of us that fired; but I can't ſay, what Ships they were.

Q. Did not the *Cambridge*, and that whole Diviſion, run away from us, and leave us engaged with thoſe Five Ships?

A. I ſaw the *Cambridge* ſtanding upon the other Tack, when we were engaged with thoſe Ships; but I took no Notice of the Vice-Admiral, or the reſt of his Diviſion.

Q. I have but one Queſtion more to aſk you, and I deſire you will anſwer it, as a Man of Honour, an Officer, and as you'll anſwer it at the Laſt Day:— Do you think, or what do you think, whether I would or would not have given my Fortune, or parted with a Leg or an Arm to have had a Ship to engage with?

A. I heard you ſeveral times expreſs your Uneaſineſs, that you had no Ship to engage with, in that Part of the Line; and that you would have given all that you was worth to have a Ship to engage with.

Q. Have you ever converſed with any of the *Berwick*'s Officers ſince?

A. No; I don't know one of them, farther than, How do you do?

Q. Did you ſee the *Berwick* ſmartly engaged with the *Poder*; and that the *Poder* ſtruck to her?

A. I heard ſo.

Q. How many Men were killed on board the *Berwick?*

A. I heard the Surgeon ſay, That one Man died of his Wounds; and that there was no other killed or wounded on board her:— I think I was told ſo by the Surgeons, but I am not poſitive.

Priſoner. This is only to prove, That I might be ſmartly engaged, and not loſe any Men.

Q. Did you hear, that the *Dragon* was ſmartly engaged, and that ſhe beat her Antagoniſt out of the Line?

A. I have heard ſo.

Q. What Men had ſhe killed?

A. I think, one of her Lieutenants told me, on board this Ship, That they had not one Man either killed or wounded; I won't be poſitive.

Then he withdrew.

Priſoner. I deſire I may ſummon Captain *Hawke*, of the *Berwick*, to give an Account of This, if the Court pleaſes.

Court. The Court have given you all the Indulgence you can deſire.

Then one of the Members acquainted the Court, That he had ſomething to inform them of, which ſeemed to deſerve their Conſideration; and moved, that the Priſoner and Audience might withdraw: And they withdrew accordingly. He then informed the Court, That he had obſerved one of the Witneſſes, who had been examined before them, upon this Tryal of Captain *Ambroſe*, to be taken into Cuſtody by the Marſhal of the Admiralty: That it appeared to be a very extraordinary Proceeding, to take a Witneſs into Cuſtody during a Tryal, while the Court might think his farther Evidence neceſſary, without the Authority, or even Application, of the Court; and that it ſeemed to deſerve their Attention.

The Court proceeded to deliberate upon this Matter, till Three o'Clock; and then adjourned the farther Conſideration of it till To-morrow Morning.

The Court was then again opened, and the Priſoner was brought in by the Marſhal: And then the Proſecutors for the Crown delivered a Letter to the Preſident: Which was read to the Court, as follows; *viz.*

SIR,

SIR,

WE are informed, That Lieutenant *Williams*, who was this Day examined by this Court, has, ſince his Examination, threatened to ſtab Lieutenant *Long*, a Witneſs ſummoned on this Tryal in Behalf of the Crown, on account of the Information he has given us, as Proſecutors for the Crown: We therefore deſire, That this Affair may be inquired into; and that the Court will interpoſe, in ſuch manner as they ſhall think proper. We are, Sir,

Your moſt obedient, and humble Servants,

31ſt *October*, 1745. *P. Creſpigny.*
Geo. Bellas.

To Sir *Chaloner Ogle*, Knight.

Upon which the Court ordered Lieutenant *Long* to be called in.

Lieutenant *William Long*, Second Lieutenant of the *Berwick*, at the Time of the Engagement, was called in, and ſworn.

Q. Declare to the Court, what paſſed between You and Mr. *Williams*.

A. Mr. *Williams* came to me about an Hour ago; and wanted to ſpeak to me; and aſked me, What it was, I had ſworn againſt him. He wanted to ſpeak to me in private: I told him, No. I ſtopped Mr. *Burges* and Mr. *Myers*; and deſired, he would ſpeak what he had to ſay before them. He ſaid, If he met me on ſhore, One or the Other of us ſhould die for it: Theſe are the Words, as near as I can recollect. I told him, I had nothing to ſay to him; and deſired, he would have nothing to ſay to me; for I had heard, his Character was ſlurred, and I would have nothing to ſay to one whoſe Character was ſlurred. Then I wanted to get off, and walked off: And he ſaid, If he had met me on ſhore this Morning, after hearing what he did, he would have ſtabbed me. I aſked him, What I muſt be doing then, to let him. He ſaid many more things; which I don't recollect.

Q. What was the Occaſion of this Difference between you?

A. It was from laſt *Monday* Morning: I met him, that is, he came to me to the Bulkhead of the Steerage here; and he ſays, Old Meſsmate, how do you do? I told him, I was very ſorry to hear, his Character was injured: Upon which, he ſaid, Wherein? For what? What do you mean? or Words to that Purpoſe. I told him, I could not keep him Company; and begged, he would not ſpeak to me, till he had cleared his Character up. Upon which, I went upon the Quarter-deck, out of his Way.

Q. Was it in this Ship?

A. Yes; it was in this Ship, laſt *Monday* Morning:—He followed me, and came up upon the Quarter-deck to me; and aſked me, What it was the World ſaid of him. I told him, The World ſaid, he was damned for Perjury. He ſays, Wherein? I don't know, ſays I; I hope, it is not true. And he ſaid, He was not ſworn before the Court.

Court to the Proſecutor. Was he examined then?

Proſecutor. He was examined on *Tueſday*.

Witneſs. This was on *Monday* Morning.—I begged of him, for God's Sake, to ſtick to Facts; for you'll be catched, and utterly ruined, if you don't. Upon which, he ſaid, I am damned; and clapped his Hand upon his Heart, What would you adviſe me to?

Court. Conſider you are upon your Oath.

Witneſs. I do; and will ſpeak nothing but what is true. I told him at firſt, Stick to Facts. He ſaid, He had already made his Depoſition. And afterwards I ſaid, For God's Sake, ſtick to Facts: If you have already ſworn falſe, ſtick to Facts, when you come before the Court; and, I hope, both God and the Court will forgive you. And he declared, he would. Then I got away from him; for I was aſhamed to be ſeen in his Company, becauſe he had a bad Character.

Q. How do you know, he has a bad Character?

A. I heard ſeveral People ſay, He had forſworn himſelf.

Q. I ſuppoſe there is no Quarrel between you and him?

A. God knows; I knew of none, till this Day.

Q. Do you apprehend any Danger from this Man?

A. I don't fear him in the Day-time; but, by his threatening to ſtab me, I don't know what to apprehend from him; or what he may intend.

Q. Was he ſober at that time?

A. Yes; he ſeemed to me to be ſober.

Then it was moved, How the Court would proceed, with reſpect to *Williams*; and whether the Marſhal ſhould take him into Cuſtody: And Inquiry being made, if he was on board the Ship, Captain *Colby* acquainted the Court, That he was told, that, as ſoon as Mr. *Long* was called in, Lieutenant *Williams* got a Boat, and went on ſhore, being conſcious of his Guilt.

Q. Did Mr. *Myers* and Mr. *Burges* hear what paſſed between you?

A. Yes.

Joſeph Myers, late Maſter of the *Eſſex*, called in, and ſworn.

Lieutenant *Long*'s Declaration was read to him: And he ſaid, He believed, it might be the Subſtance of what paſſed between *Long* and *Williams*.

Q. Repeat, as near as you can, what *Williams* ſaid.

A. He ſaid to *Long*, One or the Other of us ſhould die; and he mentioned ſeveral things, that I can't remember.

Q. Declare,

Q. Declare what you know of this Matter.

A. I heard Lieutenant *Williams* ſay to Mr. *Long*, If we were both on ſhore, I ſhould have your Life, or you ſhould have mine.

Q. Did you hear Lieutenant *Williams* ſay, That he would ſtab him?

A. No; I did not: Mr. *Long* told Mr. *Williams*, That this was not a Place to challenge him in: And he aſked Mr. *Long*, What he had ſaid or ſworn againſt him. He ſaid, He would hear that, when he was examined at the Court. Mr. *Williams* then ſaid, You have ſworn, That I made out my Journal, according to Captain *Ambroſe*'s Orders. I think, it was Mr. *Long* ſaid, I have ſworn no ſuch thing. Then they talked differently of one thing or another; but I heard him ſay to Mr. *Long*, Don't look white, don't look pale. Mr. *Williams* was laying his Hand upon Mr. *Long*'s Shoulders; and Mr. *Long* ſaid, Keep off; don't lay your Hands upon me; don't touch me: I am not afraid to meet you on ſhore in Day-time.

Q. Did you hear any body ſay, That Lieutenant *Williams* clapped his Hand upon his Breaſt; and ſaid, He was damned?

A. No.

Q. Did you hear him ſay, He would ſtab him?

A. No.

Lieutenant Long. It was Mr. *Burges*, that heard him ſay he would ſtab me.

John Burges, late Midſhipman on board the *Neptune*, called in, and ſworn.

Q. Did you hear any thing that paſſed between Lieutenant *Long* and Lieutenant *Williams*?

A. I only heard what paſſed To-day.

Q. Relate what you know of the Matter.

A. Mr. *Williams* came to Mr. *Long* upon the Middle-deck, and aſked him, What he had been ſaying againſt him; and whether he had ſaid, That he had been bribed by Captain *Ambroſe* to alter his Journal; and that he had altered it, according to his Direction. Mr. *Long* told him, He had not ſaid ſo. Mr. *Williams* ſaid, He had been told ſo; and that he would have his Life, or he ſhould have his: And told him, That, if he had met him this Morning, after hearing what he had heard, he ſhould have run him through. Mr. *Long* aſked him, What he muſt have been about then. This is all I know of the Matter.

Lieutenant *Williams* not being in the Way, the Court came to no Reſolution upon this Matter.

The Court adjourned till To-morrow Morning, at Half paſt Eight o'Clock.

The Tenth Day upon Captain AMBROSE'*s* TRYAL,

On Board His MAJESTY'*s Ship the* London, *at* Chatham,

FRIDAY, the 1ſt *November*, 1745.

THE Court met, according to Adjournment, conſiſting of the ſame Members as were Yeſterday.

The Court proceeded to the farther Conſideration of what was Yeſterday before them, relating to *Robert Langton* being taken into Cuſtody.

The Preſident communicated to the Court a Letter he received the 29th of laſt Month, from one of the Proſecutors for the Crown, relating to *Langton*, as follows; *viz.*

SIR,

AS I apprehend *Robert Langton* has been guilty of Wilful Perjury, in his Examination of this Day; and ſtill is, as I apprehend, in his Majeſty's Service, and under your Command;—If you are of Opinion, that he is perjured, I ſubmit, whether you will not immediately order him into Cuſtody, till their Lordſhips Directions herein may be known; leſt he ſhould avoid a Proſecution; and which, I hope, will deter others from ſuch like Practices.—I am, Sir,

Your moſt obedient, and

29th *Oct.* 1745. moſt humble Servant,

Geo. Bellas.

To Sir *Chaloner Ogle*, Knight.

Then the Minutes of the Examination of *Robert Langton* were read: After which, the following Queſtion was propoſed; *viz.*

Is it the Opinion of the Court, That *Robert Langton* does appear, by the Minutes taken of his Examination before the Court, to be guilty of Wilful Perjury?

Which being objected to, the previous Queſtion was put, Shall the aforegoing Queſtion be now put: And it was agreed (Sixteen to Five) that it ſhould be put: Which being accordingly done, the Court agreed (Seventeen to Four) that he does not appear, by the Minutes taken of his Examination

Examination before the Court, to be guilty of Wilful Perjury.

The following Queſtion was then propoſed; *viz.*

Is it the Opinion of the Court, That *Robert Langton*'s Evidence is quite clear, and conſiſtent throughout the Whole?

Which was objected to; and the previous Queſtion put, Shall the ſaid propoſed Queſtion be now put? And the Court agreed (Thirteen to Eight) that it ſhould not.

The Court then agreed unanimouſly, That a Letter ſhould be wrote, by the Judge-Advocate, to the Secretary to the Right Honourable the Lords of the Admiralty, acquainting their Lordſhips with the Opinion of the Court: And that the Court hoped, their Lordſhips would pleaſe to order the Marſhal to ſet *Langton* at Liberty.

Then the Judge-Advocate drew up a Letter, agreeable to the ſaid Reſolution; which he read to the Court; and they approved of it; *viz.*

SIR,

IT being, Yeſterday, obſerved at the Court Martial, That *Robert Langton*, one of the Witneſſes who had been examined before the Court, during Captain *Ambroſe*'s Tryal, was taken into Cuſtody by the Marſhal of the Admiralty; I have the Court's Directions to tranſmit to you, for the Information of the Right Honourable the Lords Commiſſioners of the Admiralty, the incloſed Copy of the Minutes taken of his Examination before the Court; and alſo of their Proceedings, Yeſterday and this Day, relating thereto: And as the Court are of Opinion, That *Langton* does not appear to have been guilty of Wilful Perjury, they hope, that their Lordſhips will pleaſe to ſend Orders to the Marſhal, to ſet him at Liberty. I am, *&c.*

Chatham, 1ſt *Nov.* 1745. *Cha. Fearne.*

To the Honourable *Thomas Corbett*, Eſquire.

Then the Priſoner was ordered to be brought into Court, and the Witneſſes to be called in.

Mark Lynch, late on board the *Namur*, called in, and ſworn.

His Depoſition was read.

Mark Lynch, *who was on board the* Namur, *during the whole Time his Majeſty's Fleet engaged that of the Enemy, maketh Oath*;

THAT, on the 11th Day of *February*, 1743. in the Morning, Admiral *Mathews* made the Signal for the Line of Battle, one Ship ahead of another: That, at Half paſt Twelve, he bore down to attack the *Real*, and, at One, engaged her: That the Ships aſtern alſo bore down: That he looked out on the Starboard-ſide, on the Quarter-deck, after the *Namur* had fired Two or Three Broadſides, and then ſaw the *Rupert* a little on the Admiral's Starboard-Quarter: That ſome time after the Engagement began, he ſaw the *Hercules* wear round, as he ſuppoſes, to join Five Ships of the Enemy, that were aſtern, and coming up; but, by the *Rupert*'s Bearing down to her, ſhe wore again, went under her Admiral's Lee; which, he verily believes, was occaſioned by the *Rupert* ſtanding for her: This was, as near as he can remember, about Half paſt One o'Clock; but cannot be poſitive to the Time: That, a little after, he ſaw the *Rupert* ſtanding down to intercept Five Ships of the Enemy, which were crouding Sail towards their Admiral: That he ſaw the *Rupert* before the *Marlborough*'s Maſts fell, engaged with the headmoſt Ship of thoſe Ships; and that he continued, ſo engaged, till near Five o'Clock; and, to the beſt of his Judgment, within proper Diſtance for doing Execution; as he ſaw ſeveral of the Enemy's Shot fly over the *Rupert*; which did not give over Engaging, till Admiral *Mathews* wore Ship, bore down to the Enemy, and made a Signal, with the White Flag at the Fore-topmaſt Head, about Five o'Clock: That the *Rupert* then hauled her Wind, ſhot out ahead of the Admiral, wore round, and fell into a cloſe Line aſtern of the *Dorſetſhire*: That the *Rupert* was about a Mile diſtant from the *Hercules*, when the Admiral engaged the *Real*; and about the ſame Diſtance from the *Namur*: That ſhe did not fire, as he ſaw, at the *Real* and *Hercules*; but the *Dorſetſhire* and *Eſſex* kept a continual Fire on the *Real* and *Hercules*: That the *Rupert* began to engage the Headmoſt of the Five Ships, about Three o'Clock: That the Enemy began firſt to fire, and he ſaw their Shot go over the *Rupert* before ſhe fired a Gun: That the *Marlborough*'s Maſts fell about Half paſt Three: That the *Rupert* was then Two or Three Miles diſtant from the *Marlborough*, and was then engaged with the Two Headmoſt of the Five Ships of the Enemy: That he verily believes the *Rupert*, by engaging the ſaid Ships, hindred their joining their Admiral as ſoon as they otherwiſe might; for ſhe forced them to edge away, and break their Line: That the *Rupert* was between the ſaid Five Ships and the Fireſhip; and the Shot the Enemy fired at the ſaid Fireſhip, he ſaw fall ſhort: That the Five *Spaniſh* Ships never paſſed the *Rupert*: That if the ſaid Five Ships kept the ſame Courſe they at firſt held, they would have fetched to Windward of the *Rupert*.

Mark Lynch.

Sworn before me, this Firſt Day of *Nov.* 1745.
Cha. Fearne, Ju. Ad.

In reading the Preamble to his Affidavit; *viz.*

" *Mark Lynch*, who was on board the *Namur*, " and on her Quarter-deck, during the " whole Time his Majeſty's Fleet engaged " that of the Enemy;"

He obſerved, That he was not always upon the Quarter-deck; but that he was ſometimes upon the Poop, and other Places, where the Admiral ſent him.

Q. Where was you quartered?

A. Upon the Quarter-deck.

Q. When was the Affidavit dated?

The Judge-Advocate ſaid, It was ſworn to, juſt now.

Q. What Countryman are you?

A. An *Iriſhman.*

Q. Is that your Depoſition?

A. Yes.

Q. Do you know every thing there to be true?

A. As near as I can believe, it is true.

Q. Did you ſee the *Rupert* in a Line with the *Namur* and *Marlborough?*

A. Yes; I ſaw her, ſometimes rather to Leeward of the Line: I looked over the Side of the Quarter-deck, after Two or Three Broadſides, and ſhe was in a Line, to the beſt of my Opinion: I ſaw her, a little upon our Starboard-Quarter:—Some time afterwards I looked out of the Aftermoſt-Port on the Starboard-ſide, and I ſaw the *Rupert* was then rather to Leeward of us, about the ſame Poſition ſhe was in before.

Q. Which Side of the Quarter-deck, did you look over?

A. The Starboard-ſide.

Q. Was you then engaged?

A. Yes:—I looked over by one of the Aftermoſt-Guns, which did not then play, becauſe one of the Trucks was knock'd off.

Q. What Time was it, when the *Rupert* was firſt in the Line?

A. I believe, about Half an Hour after One:—When I looked over the Side, it was after One, I imagine: I am not certain of the Time.

Q. Was you firing at the *Real* then?

A. Yes.

Q. Did you fire your Stern-Chace then?

A. No; we fired Broadſides.

Q. You ſay it was about Half an Hour paſt One, when you looked over the Side of the Quarter-deck?

A. I ſay, it was thereabouts; I am not certain as to the Time: If any thing, it was rather before, than after Half an Hour paſt One.

Q. What Diſtance might the *Rupert* be then, from you?

A. I believe, about a Mile.

Q. How near might ſhe then be to the *Hercules?*

A. I believe, about the ſame Diſtance; I don't ſay poſitively the ſame, but thereabouts.

Q. You ſay, upon the *Rupert*'s getting into the Line, the *Hercules* bore away.

A. No; I ſay, ſome time after I ſaw the *Rupert* get into the Line; about Half an Hour; I ſaw the *Hercules* wear round, and bear away to the Five Ships aſtern.

Q. What did the *Rupert* do then?

A. I ſaw her edge towards her, and bear down; and then the *Hercules* wore round again, and ſhot under the *Real*'s Lee.

Q. And what did the *Rupert* do then?

A. She came up again, and fell into her Station, as ſhe was before, not quite ſo far to Windward, but rather more to Leeward than when I ſaw her before: I did not ſee her always, but only now-and-then.

Q. How long did ſhe lie ſo, before ſhe bore away again?

A. To the beſt of my Knowlege, it was about Two o'Clock, when ſhe bore away to the Five *Spaniſh* Ships, or thereabouts.

Q. What was you doing on board the *Namur*, when you ſaw her bear away to the Five Ships?

A. I was looking out of the Sternmoſt Port: We were engaging the *Real* then.

Q. Had the *Real* received any Damage from you, before the *Rupert* bore away?

A. To the beſt of my Knowlege, ſhe had her Main-yard down; her Rigging tattered in Pieces; her Foreſail ſhot all to Pieces; the Main-topſail-yard upon the Cap.

Q. Was this before the *Rupert* bore away?

A. Yes, I think it was before, or about the Time ſhe bore away.

Q. Are you poſitive, Was it before, or at the Time ſhe bore away?

A. I am not very poſitive: I believe, it was rather before.

Q. What o'Clock was this?

A. It was about Two o'Clock.

Q. Where was the *Hercules* then?

A. A little upon the *Real*'s Quarter; and the *Dorſetſhire* and *Eſſex* were firing at her.

Q. What was the *Marlborough* doing then?

A. I ſaw her do nothing at all then: We began to engage before her; for we began to engage about One, and we were by the *Real*'s Side till Two o'Clock; an Hour before the *Marlborough* engaged her.

Q. What! was you engaged an Hour before the *Marlborough* engaged at all?

A. No, not engaged an Hour before the *Marlborough* engaged at all: I know, we lay an Hour along-ſide the *Real*, before we ſhot ahead.

Q. What was the *Marlborough* doing then, when you ſaw the *Rupert?*

A. I don't know; I did not obſerve her.

Q. You ſaid, ſhe did not engage till an Hour after you; and now you ſay, you don't know, what ſhe was about.

A. I don't know that I ſaid ſo.

Q. You did ſay ſo: Speak deliberately; don't ſpeak ſo haſtily: Conſider what you ſay: I don't deſire to hurry you: Explain yourſelf: Was you engaged an Hour before the *Marlborough?*

A. No; I did not ſay, we were engaged an Hour before the *Marlborough*; I ſaid, we lay an Hour along-ſide the *Real*, before we ſhot ahead.

Q. That was an Amendment: Did you ſee the *Marlborough* then?

A. No;

A. No; I did not mean, that we were engaged an Hour before ſhe began; but, that it was an Hour before we ſhot ahead.

Q. What was the *Marlborough* doing then?

A. I can't tell; I did not obſerve her.

Q. You ſay, you did not ſee the *Marlborough*; Did you not mind what ſhe was doing, when you looked at the *Rupert?*

A. No; I did not mind.

Q. Where was the *Marlborough* then?

A. She was but a little Diſtance from us; ſhe was pretty near us.

Q. It is very extraordinary, that you ſhould ſee every Action done by the *Rupert*, which was a Mile from you, and yet you did not know, what the *Marlborough* was doing, which was cloſe to you?

A. I did not take Notice of the *Marlborough:* I might take more particular Notice of one Ship, than of another.

Q. You ſay, you was ſometimes upon the Poop, and ſometimes upon the Quarter-deck?

A. Yes.

Q. Where was you the firſt Hour of the Engagement?

A. Moſtly upon the Quarter-deck.

Q. Was not you upon the Poop, when you was not upon the Quarter-deck, within that time?

A. No:—In that Hour, I was not upon the Poop; I was under the Awning; which I don't reckon the Quarter-deck: The Quarter-deck I only reckon from the Awning forwards.

Q. Do you think ſo?

A. Yes, I do; but I ſubmit to better Judgment.

Q. Did you ever ſee the *Marlborough* engaged?

A. Yes; I ſaw her engaged very cloſely, after we ſhot ahead.

Q. What o'Clock what that?

A. It was Two o'Clock, or better.

Q. Where was the *Rupert*, when you ſhot ahead?

A. Why, at the Time, when we ſhot ahead, the *Rupert*, about Two o'Clock, was Bearing down to the Five Ships:—It was about Two o'Clock, when ſhe bore down; and 'twas Two o'Clock, or better, when we ſhot ahead; and therefore ſhe muſt conſequently be then Bearing down.

Court. You are to tell the Court, what you know, and not draw Conſequences.

Q. When the *Marlborough* ſhot up, to engage the *Real*, What Ship was left to engage the *Hercules?*

A. Why, there were the *Dorſetſhire* and *Eſſex* left to engage the *Hercules.*

Q. Were the *Dorſetſhire* and *Eſſex* in a Line with the *Namur* and *Marlborough?*

A. They were to Windward, upon our Larboard-Quarter: I ſaw the *Dorſetſhire* upon our Larboard-Quarter, and the *Eſſex* a little to Windward of the *Dorſetſhire.*

Q. Do you think, the *Dorſetſhire* and *Eſſex* were within point-blank Shot?

A. I ſaw the Enemy's Shot go over them; but whether their Shot reached the Enemy, I can't tell.

Q. If they were at ſuch a Diſtance, you could not look upon that as any Sort of Engagement.—Were they within a Diſtance to do proper Execution?

A. I don't know, whether they were or not: I ſaw the Enemy's Shot go over them.

Q. I think you ſaid, the *Rupert* bore away to thoſe Ships aſtern, about Two o'Clock; That was the Time you hauled off; was it not?

A. No: I ſay, we hauled off, rather after Two.

Q. How long had the *Rupert* bore away, before you hauled off?

A. I believe, a little time: I am not poſitive as to the Time; I had not a Watch in my Hand.

Q. Had the *Rupert*, to your certain Knowlege, bore down towards the Enemy, before the *Namur* hauled off?

A. Yes: If not before the *Namur* ſhot ahead.

Q. As the *Dorſetſhire* and *Eſſex* were ſo far diſtant from the Enemy, Don't you think, it would have been more for the Service, for the *Rupert* to have ſhot ahead, and cloſed with the *Marlborough*, and engaged the *Hercules*, than to have bore down to thoſe Five Ships which were ſo far aſtern?

A. If you pleaſe to have me give my Opinion of it, I will.—I ſaw the Enemy's Shot go over the *Dorſetſhire* and *Eſſex*; and, in my humble Opinion, it was better for the *Rupert* to go down, and intercept thoſe Five Ships, and hinder their coming up to aſſiſt their Admiral, than to ſtay where ſhe was; where I thought there were Ships enough, the *Marlborough*, *Dorſetſhire*, and *Eſſex*, to engage Two Ships of the Enemy.

Q. But you have not made it appear to me, that the *Dorſetſhire* and *Eſſex* were near enough to engage?

A. I ſaw the Enemy's Shot go a great Way over the *Dorſetſhire* and *Eſſex.*

Q. Are you ſure they went over the *Eſſex?*

A. Yes; I am ſure of it; a great Way over them.

Q. Where was you quartered?

A. Upon the Quarter-deck.

Q. For what was you quartered there; becauſe I find you was upon the Quarter-deck, Poop, and Every-where?

A. I was upon the Quarter-deck the firſt Hour, till ſuch time as one of Mr. *Mathews*'s Aid Du Camps had one of his Legs ſhot away, and the other Aid Du Camp was wounded; and I was a good while after upon the Quarter-deck, till the Admiral went upon the Poop, and I went to him, and was deſired by him to paſs the Word, to reeve the Rigging, and ſtopper the Shrouds; the Rigging and Braces being ſhot to pieces: There was ſcarce a Brace in the Ship, but what was ſhot away.

Q. Were

Q. Were thoſe Gentlemen killed, in whoſe ſtead you was appointed?

A. One had his Leg ſhot off, and the other was wounded.

Q. What time of the Day was it, when you went up with the Admiral upon the Poop?

A. It was a great while after Two o'Clock.

Q. How did the *Namur*'s Head lie then?

A. I did not mind how her Head lay then; I did not go to the Compaſs: We had ſomething elſe to mind.

Q. Was your Ship engaging then?

A. We were then playing ſome of our Guns, ſome of the Aftermoſt-Guns: I believe, it was, while we were reeving our Braces, and ſtoppering our Shrouds.

Q. And pray, when you was upon the Poop with the Admiral, How did you ſee the *Rupert* then?

A. I ſaw her engaged:—No; I did not mind the *Rupert* at all then, when I went firſt upon the Poop; I was upon the Poop another time, and ſaw the *Rupert* engaged.

Q. When you went with the Admiral upon the Poop the firſt time, Did you ſee the *Rupert* engaged then?

A. No; not the firſt time.

Q. What time was that?

A. It was a great while after Two.

Q. When did you ſee the *Rupert* after that?

A. I ſaw her about Three o'Clock, or a little after.

Q. Did you ſee the *Marlborough* then?

A. No; I did not mind the *Marlborough* then.

Q. Not the Ship next to you?

A. I might ſee her, but not to mind what ſhe did: I did not obſerve her then.

Q. When the Admiral wore Ship, Did you keep out the Signal for the Line of Battle?

A. No; we hauled down the Signal for the Line of Battle: I ſaw it at the Mizen-Peek before; but at that time I did not ſee it; which I muſt have done, if it had been up; and therefore it could not be then hoiſted.

Q. Did you hoiſt it again?

A. Yes.

Q. I don't mean, when you firſt bore down to engage; but after you had engaged on the Larboard-tack, and wore Ship in the Evening to the Northward?

A. I underſtand it ſo:—We then hauled down the Signal for the Line of Battle.

Q. Did you hoiſt it again afterwards?

A. Yes; we did.

Q. When?

A. I can't tell poſitively the time: It was in a little time after we wore; I don't know the certain time.

Q. Was it the ſame Signal?

A. Yes; it was the ſame Signal at the Mizen-Peek.

Q. What was the Signal?

A. A Jack at the Mizen-Peek.

Q. After you wore, Did you go to Windward, or to Leeward of the the *Marlborough*.

A. We went to Leeward of the *Marlborough*.

Q. At what Time of the Day did the Admiral make the Signal for the Line of Battle ahead in the Morning?

A. About Nine o'Clock; but I can't be certain as to Times, as I obſerved before.

Q. When did you make your Depoſition?

A. Several Days ago, before Captain *Ambroſe*'s Tryal came on: I had made my Depoſition before any of Captain *Ambroſe*'s Witneſſes were examined.

The Judge Advocate acquainted the Court, That the Witneſs brought his Depoſition to him the Seventeenth of *October*, as appeared by its having been dated that Day, in order to his ſwearing to it; but that he did not ſwear him till this Morning.

It was then propoſed, by one of the Members, That the Clauſe in the Act of Parliament againſt Perjury, ſhould be read to this Witneſs; and that, if Captain *Ambroſe* had any more Witneſſes, they might be called in, to hear it read.— The Priſoner ſaid, He ſhould not trouble the Court with any more Witneſſes.

Q. Have you read the Clauſe?

A. I have.

Q. Can you read and write?

A. Yes, to be ſure; I can both read and write.

Q. Are you ſenſible of the Nature of an Oath? And what the Conſequences are of taking a falſe Oath?

A. I am:— That, if I did not ſpeak Truth, I am to be puniſhed accordingly; damned in the next World, and puniſhed in this:— I have as much Honour as any Man in the World, not to take a falſe Oath.

Q. What time was it, that the Admiral hailed the *Marlborough?*

A. I don't remember any thing of it.

Q. Do you remember nothing of the *Marlborough*'s being cloſe aſtern of you, in a good Line, before the Admiral bore away to engage the Enemy?

A. Yes; we were all in as good a Line, as any in the World — The Admiral's Diviſion was.

Q. Where was you quartered?

A. Upon the Quarter-deck.

Q. Was the Admiral off the Quarter-deck at any time, from the making the Signal for the Line in the Morning, to the time of his Bearing away ſhort down upon the Enemy?

A. Not that I remember.

Q. Was you at your Quarters all that time?

A. I believe, I was, to the beſt of my Knowlege; I don't remember, that I went from them.

Q. What

Q. What was your proper Duty, by the Quarter-Bill upon the Quarter-deck?

A. I aſked the Admiral, and Captain *Ruſſell*, Where I ſhould be quartered; and they told me, Any-where; and I told them, I choſe the Quarter-deck.

Q. Did you belong properly to the *Namur?*

A. Yes, I may ſay, I did belong properly to the *Namur*:— I belonged to her, by being on board of her.

Q. Was you upon the Ship's Books; or was you a Paſſenger?

A. I muſt have been upon the Ship's Books; becauſe I was victualled there.

Q. How long did you remain in the *Namur?*

A. I remained in her, till after the Gale of Wind, after the Engagement;— till after we got into *Minorca.*

Q. What time did you firſt go on board the *Namur?*

A. Five or Six Days before the Engagement begun.

Q. From what Ship did you go into her?

A. I went from *Marſeilles*, in the Packet, to *Hieres*; and there went on board the *Eſſex*; and from thence on board the *Namur.*

Q. Have you never received any Pay for the Time you was on board the *Namur*, or any Ticket for Pay?

A. I received Pay from the Admiral.

Q. What was your Employment on board the *Namur?*

A. I did no Duty on board her, if I did not pleaſe myſelf, until the Day of Action.

Q. How was you employed?

A. In the Government's Buſineſs:— I don't know what theſe Queſtions ſignify; they are not fair Queſtions in an open Court.

Q. Was that the firſt time of your coming on board the *Namur?*

A. No; I had been on board her before that.

Q. How many times had you ſeen the *Rupert* before that Day's Action?

A. Why, very often;—coming down from *Toulon* to *Hieres-Bay*, very often with *French* and *Spaniſh* Officers, to ſee her, when ſhe uſed to come in from her Cruizes; and that made me obſerve her ſo particularly in the Day of Action; becauſe I had heard ſo often, from the *French* and *Spaniſh* Officers, of her being a fine Cruiſer, and of her running Ships on ſhore, and taking Ships ſo much; and of her Actions.

Q. What Colour was the *Rupert* painted?

A. I did not take Notice of that; I took Notice of her Maſts and Yards, and Sweep; and I knew what Ship ſhe was, by being in the Line, in her Station.

Q. When you ſaw the *Rupert* out of the Starboard-port, What Part of the *Rupert* pointed to you?

A. Her Head.

Q. How could you diſtinguiſh the Sheer of the *Rupert*, with her Head right to you?

A. I then diſcerned her by her Maſts and Yards; I did not ſee her Sheer at that time.

Q. What particular Marks did you know the *Rupert*'s Maſts and Yards by?

A. By the Tauntneſs of her Maſts, and by the Rigging; becauſe ſhe carried a good deal more Sail than other Ships did.

Q. Was there any other Ship near the *Rupert* at the ſame time, that you could diſtinguiſh her Maſts and Yards by their Tauntneſs?

A. I did not mind any other Ship by her.

Q. Are you a Seaman?

A. A Piece of one.

Q. Do you remember nothing of the *Namur* hailing the *Marlborough*, or the *Marlborough* the *Namur*, before your Bearing down to engage the Enemy?

A. I remember nothing of it.

Q. What Ships bore down with the Admiral, when he bore down firſt to engage the Enemy?

A. I ſaw Four or Five bear down with us.

Q. What Ships?

A. I don't know what Ships; I ſaw the reſt of the Ships aſtern bear down; I did not reckon them one by one.

Q. From the time you firſt ported your Helm, and began to bear down, till the time you began to engage the *Real*, How long was it?

A. About an Hour and an Half; for we began to bear away about Half an Hour after Twelve; and began to engage the *Real* about One.

Court. Then, that was but Half an Hour?

Witneſs. No.

Q. Was the *Namur* the firſt Ship that engaged the Enemy?

A. Yes.

Q. How long did you engage the *Real* by yourſelves, before you had any Aſſiſtance?

A. I don't know how long, as to Aſſiſtance; but we engaged her an Hour before we ſhot ahead.

Q. Did not the *Marlborough* fire at the ſame time?

A. I don't know, whether ſhe fired or not; for I took no Notice of her, before we ſhot ahead.

Q. You took no Notice of the *Marlborough* before the time of your Shooting ahead?

A. No.

Q. Was the *Namur* or *Marlborough* neareſt the Enemy, when the *Namur* engaged for that Hour?

A. The *Namur* muſt have been neareſt; becauſe we wore ſo cloſe to the *Real*, that I ſaw the *Real*'s People walking on the Quarter-deck; and I knew the Gentlemen walking on her Quarter-deck, by their Cloaths.

Q. How long did you continue to engage, after you ſhot ahead?

A. I don't know how long we continued to engage; but ſome of our Aftermoſt-Guns played upon the *Real*, while we were reeving the Braces, and ſtoppering the Shrouds.

Q. When, did you firſt obſerve the *Marlborough* to be engaged?

A. I did not obſerve her, till after we ſhot ahead; then I ſaw her warmly engaged; but I don't know, that I ſaw her before.

Q. What! Never before?

A. To the beſt of my Remembrance, I don't know, that I ſaw her engaged before.

Q. When you firſt perceived the *Marlborough* to be warmly engaged, after you ſhot ahead, Where did you ſee the *Rupert* then?

A. I did not mind her at that time: It was about Two o'Clock that I ſaw her bear down to the Enemy; and I did not obſerve her after that, till about Three o'Clock, when I ſaw her engaged with thoſe Five Ships.

Q. Did you take Notice of the *Marlborough*'s loſing her Maſts?

A. Yes; I ſaw her Maſts fall.

Q. Was ſhe then to Windward, or to Leeward, of the *Namur?*

A. I believe, ſhe was much the ſame, about aſtern of the *Namur*, or rather a little to Leeward; but I can't well remember; I can't be certain of it; but I remember, I ſaw her Maſts fall.

Q. What Ships do you think ſhe was engaged with, when her Maſts fell?

A. The *Real* and *Hercules*, I believe:—There was no other Ship for her to engage.

Q. How long was it before or after the *Marlborough*'s Maſts fell, that the *Real*'s Main-yard came down?

A. A great while before that; it was between One and Two, that her Main-yard came down.

Q. Do you remember, what *Engliſh* Man of War engaged the Headmoſt of the Five *Spaniſh* Ships firſt?

A. I believe, it was the *Royal Oak* that engaged her firſt.

Q. Where did you obſerve the *Royal Oak* then?

A. She was aſtern of the *Rupert*, and upon her Larboard-Quarter withal.

Q. How long was the *Royal Oak* engaged with them alone, before the *Rupert* was engaged with them?

A. I don't know how long;—I took Notice, about Three o'Clock, that the *Rupert* engaged the Headmoſt of thoſe Five Ships, and their Shot went a great Way over her.

Q. How long did the *Rupert* continue to engage thoſe Five Sail?

A. Till the Admiral wore in the Evening.

Q. What time was that?

A. Between Four and Five o'Clock, or thereabout, I believe it was.

Q. When the Admiral wore, How did the *Rupert* bear from the Admiral, in reſpect to his Stern, juſt before the Poſition of the Admiral's Ship was altered?

A. I don't know.

Q. From what Part of the Ship did you ſee the *Rupert*, juſt before you hauled down the Signal, and wore?

A. I can't remember that juſtly, as to the Poſition and Minute of Time; I did not mind that; I ſaw her juſt before we wore.

Q. Well; a Quarter of an Hour before you wore?

A. I did not then mind how ſhe bore of us.

Q. What became of the *Rupert*, after the Admiral wore?

A. She came up, and ſhot ahead of the Admiral.

Q. Immediately before you made a Diſpoſition for Wearing, How did your Ship's Head point or lie?

A. I did not look at the Compaſs; we had then our Larboard-tacks on board.

Q. Was you upon a Wind, or a Point from the Wind, or Large; or how was you?

A. I had ſomething elſe to mind, than to look at the Vanes or Compaſs; but the Wind was Large in the Morning; and, I was told, it continued ſo all Day; but I can't ſay it myſelf: If the Wind was Large, there could be no Tack on board.

Q. What Diſtance do you think the *Rupert* might be from you, at the time you wore?

A. I believe, about a couple of Miles.

Q. How long was the *Namur* in Wearing?

A. I don't recollect.

Q. What Diſtance of Time was it, between your beginning to wear, and coming upon the Starboard-tack?

A. I can't tell.

Q. At the Diſtance of Two Miles, which you ſay the *Rupert* was from you, Could ſhe not have wore ſoon enough to have been ahead of the Admiral, with the Starboard-tack on board, if ſhe had endeavoured it, when ſhe firſt perceived the Admiral to wear?

A. I don't know; I will not give my Judgment upon any thing, but what I am ſure of.

Q. Do you recollect, as you was upon the Quarter-deck with the Admiral moſt Part of the Day, any thing of a Signal being made for the Fireſhip to prime?

A. I know nothing of it.

Q. Do you know any thing of the Fireſhip having Orders to go down, and burn the *Real?*

A. I believe ſhe muſt have had ſuch Orders, by ſeeing her bear down; but I know it no otherwiſe.

Q. At what Time of the Day was it, that ſhe bore down?

A. I can't recollect.

Q. Was it before or after the *Marlborough* loſt her Maſts?

A. I can't ſay; I have forgot, whether it was before or after.

Q. You ſaw her going down, I ſuppoſe?

A. Yes, I ſaw her bear down; but I can't recollect the Time of the Day.

Q. Did

Q. Did you ſee her burn, or blow up, or diſappear?

A. Yes, I think I ſaw her blow up; becauſe I ſaw a great deal of Smoke, and a great deal of her Timber, and other Parts, on Fire, upon the Water, afterwards.

Q. What *Engliſh* Man of War was neareſt to her then?

A. I can't tell; I was only looking at her and the *Real*, and minding the Smoke: I only now-and-then looked out; I was not continually looking out.

Q. Where was the *Marlborough* at that time, to the beſt of your Remembrance?

A. I don't remember; I can't be poſitive, where the *Marlborough* was at that time: I did not mind any thing, as I ſaid before, but the Fireſhip and *Real*.

Q. How far do you think the *Rupert* was aſtern of you, at the time the Fireſhip blew up?

A. I can't be certain what Diſtance ſhe was at that time; but, a little afterwards, when the Admiral wore, I believe ſhe was about Two Miles from us: My Eyes were not fixed upon her all the time.

Q. Can you judge, what Diſtance you yourſelves, in the *Namur*, were at that time from the Fireſhip?

A. I believe, about a Mile and an Half; but I can't be poſitive as to the Diſtance.

Q. At the time the *Rupert* was theſe Two Miles diſtant from you, How did ſhe bear from you?

A. Upon our Quarter, and aſtern withal, a little to Leeward of us.

Q. Was your Head lying then as near to the Wind, as when you engaged?

A. I can't tell; I believe, at the time we were Wearing, ſhe was Two Miles from us upon our Starboard-Quarter. It was about the time that we were going to wear; and ſhe was then to Leeward of us, I believe.

Q. Did you never ſee any other *Britiſh* Man of War, beſides the *Royal Oak* and *Rupert*, engage thoſe Five ſternmoſt Ships of the Enemy?

A. Indeed, it's ſo long ago, that I don't remember.

Q. As you was upon the Quarter-deck near the Admiral, moſt Part of the Day, Did you ever obſerve the Admiral expreſs any Concern at the Four Ships aſtern not being in a Line, or neglecting to do their Duty?

A. I did not hear him.

Q. Did you ſee the *Royal Oak* engage a ſingle Ship, before the *Rupert* got into the Line?

A. I never ſaw a ſingle Ship of thoſe Five *Spaniſh* Ships aſtern: They were cloſe together; the Two Headmoſt were cloſe, and a little Diſtance between them and the other Three.

Q. Was the Diſtance between the *Hercules* and the Headmoſt of thoſe Five Ships, greater than the Diſtance between the Two Headmoſt and Three Sternmoſt of thoſe Ships?

A. Yes, a great deal; for thoſe Five Ships kept pretty cloſe together; there was only a little Diſtance, that could juſt be ſeen between the Two Headmoſt and Three Sternmoſt.

Then the Queſtions from the Proſecutors for the Crown, were asked, as follow:

Q. When the Admiral ſtood to the Northward on the Starboard-tack, after Wearing, in the Evening, What Station was the *Rupert* in?

A. She was the Second Ship aſtern of the Admiral; ſhe was next to the *Dorſetſhire*, which was between her and the Admiral.

Q. What Ship was next aſtern of the *Rupert* on the Starboard-tack, after Wearing?

A. I believe it was the *Eſſex*; but I am not certain; I don't juſtly know.

Q. Did the Admiral, and his Diviſion, in ſtanding to the Northward, after Wearing, in the Evening, paſs to Windward, or to Leeward, of the *Marlborough?*

A. To Leeward.

Q. What Ships of that Diviſion paſſed to Leeward?

A. I don't know; I can't ſay what or how many Ships: I had ſomething elſe to mind.

Priſoner asked,

Q. Pray, What Religion are you of?

A. I am of the Church of *England*.

Q. Had I any Knowlege or Acquaintance with you before the Day of Battle, or did I ever ſee you before?

A. I ſaw you; but I never ſpoke to you in my Life before that Day, that I know of; nor had I any Acquaintance with you then, neither.

Q. How many Days was it after the Day of Action, that I ſaw you to have any Knowlege of you?

A. I never ſpoke to you, till ſuch time as I made my Eſcape from the *French* to you at *St. Remo*, when you was Commodore there.

Q. What Ship did you come Home in?

A. The *Neptune*.

Q. When did you ſee me here in *England?*

A. I have not ſeen you in *England*, till I ſaw you on board the Yacht, when you was a Priſoner there.

Q. Tell the Court how you came here: What brought you down here?

A. I was ſent Home in the *Neptune* by Mr. *Rowley* upon my own Affairs.

Q. When you was ſent Home by Mr. *Rowley*, Had you any Notion of being called here as an Evidence for me?

A. No, I had not; nor did I ever ſee you, you know, ſince I ſaw you at *Mahon*, till I ſaw you here on board the Yacht.

Q. Who was it commanded the *Real*, after the *Spaniſh* Admiral and the Firſt Captain left the Deck?

A. He that commanded a Seventy Gun Ship at *Villa Franca*, Monſieur *De Lage*.

Q. Have you been a Priſoner with that Gentleman ſince?

A. Yes, I have, about Two or Three Months.

Q. How long was you a Priſoner in all?

A. About Thirteen Months.

Q. Where? In *Spain*, or in *France?*

A. In *France.*

Q. Before you ſtole off to me?

A. Yes, Thirteen Months before I made my Eſcape to you at *St. Remo.*

Q. Had you any Converſation with that Captain about the Engagement?

A. Yes, very often, to be ſure; I have talked often with him about the Engagement.

Q. Did you ever talk to him about thoſe Two particular Ships of the Five, that I was engaged with, and how they ſuffered?

A. I did; and I aſked him, Whether thoſe Ships had any Loſs, or were damaged? And he made Anſwer, That they had their Rigging all cut, and a great many Men killed and wounded; and then I told him, Our Ships received little or no Damage: And he made Anſwer, That all their Ships fired at our Rigging, in order to diſable us; and that we fired at their Hulls; which was the Reaſon of it.

Q. Have you ever ſpoke with any of the Officers of thoſe Two Ships ſince?

A. Yes; I have ſpoke with the Lieutenant of one of them, a Lieutenant of the *Alcon*, the Headmoſt of the Five, who ſaid to the ſame Purport as Mr. *De Lage* did.

Q. Pray, Can you recollect, that he told you, how many Men were killed and wounded?

A. Both he and Mr. *De Lage* told me, that thoſe Ships had One-hundred Men killed and wounded.

Q. Did they ſay, It was the *Rupert* and *Royal Oak*, that engaged them?

A. They did not mention the Ships Names; but they ſaid, It was the Two Ships aſtern, that engaged them, that did them the Damage.

Court aſked,

Q. I have been informed you was in the *Spaniſh* Service?

A. Yes; I was in the *Spaniſh* Service, before the War began; I was obliged to take on in the *Spaniſh* Service, by a Relation I have in *Cadiz*; and ſerved on board a *Spaniſh* Man of War, by the Inducement of my Relation; and I could get no Opportunity to leave them, after the War was declared, till the *Spaniſh* Fleet went to *Toulon*; and then I ſurrendered myſelf to Admiral *Mathews* in the Year 1742. in *Hieres* Bay; as a Gentleman, who is now in the Court, knows; and I have been Three Years in our Service.

Q. What have you been in the Service?

A. I have been employed in the *Engliſh* Service theſe Three Years paſt; and it is very well known, that I have ſerved with a great deal of Fidelity in the Service.

Then he withdrew.

The Priſoner was aſked by the Court, If he had any other Witneſſes to examine? The Priſoner anſwered, Yes; I have the Maſter of the *Berwick.*

Then the Court told him, to prepare his other Witneſſes, and his Defence, againſt *Monday* Morning.

The Court adjourned till Monday *Morning next, at Half paſt Eight o'Clock.*

Fourth, Fifth, Sixth, Seventh of November.

The Eleventh, Twelfth, Thirteenth, and Fourteenth Days upon Captain AMBROSE'S *TRYAL,*

On Board His MAJESTY'S *Ship the* London, *at* Chatham,

Monday, the 4th of *November*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, as were on *Friday* laſt.

The Priſoner brought in by the Marſhal.

The Preſident communicated to the Court a Letter he had received from the Secretary to the Right Honourable the Lords of the Admiralty, as followeth; *viz.*

Admiralty-Office, 3 Nov. 1745.

" SIR,

" HAVING received a Letter from the " Judge-Advocate of his Majeſty's Fleet, " with a Copy of the Minutes taken at the " Court-Martial ſitting at *Chatham*, in relation " to an Accuſation laid againſt *Robert Langton*, " a Midſhipman belonging to the *Rupert*, by " the Proſecutors for the Crown, for Inconſiſtencies and Prevarications in the Courſe of " his Evidence at the Tryal of Captain *Ambroſe*, and even for wilful Perjury; for which " their Lordſhips had ordered the Marſhal of " the Admiralty to take him into Cuſtody, in " order to be proſecuted for the ſame; and " the Court having requeſted, that as his further Evidence may be neceſſary in the Courſe " of the ſaid Tryal, he may be ſet at Liberty; " I am commanded by their Lordſhips to acquaint you, that after ſuch Repreſentation " having been made to their Lordſhips, as " aforeſaid, by the Proſecutors for the Crown, " they did not apprehend the Court could " have any further Uſe for his Teſtimony; " and

" and therefore ordered him into Cuſtody :
" But as they find by the Minutes, that the
" Court have been divided in their Opinion
" in relation thereto, their Lordſhips have
" complied with the Requeſt of the Court,
" and ordered him to be ſet at Liberty : But
" they command me to ſignify their Direction
" to you, to order the Judge-Advocate to
" let them know, when the Court have done
" with him, that they may have the Com-
" plaint that has been made againſt him in-
" quired into.

" I am, &c."

Tho. Corbett.

Then the Preſident ordered the Marſhal to diſcharge *Langton* ; and *Langton* was directed to continue to attend.

The Priſoner then obſerved to the Court, That a Paragraph was publiſhed in a News-paper, which ſet forth, That he ſeduced a Witneſs ; and that Captain *Parry*, upon re-examining him, found him guilty of Perjury ; and deſired the Court would take it into Conſideration.

Captain *Parry* ſaid,—That he had ſeen the ſame Paragraph in the News-paper, and deſired the Court would hear him read it : Which was allowed ; and he read it accordingly, as follows ; *viz.*

Chatham, Oct. 31ſt.

" This Day only Two Evidences were ex-
" amined for Captain *Ambroſe :* The firſt
" was Captain's Clerk, who had very little
" to ſay ; and the other was Lieutenant of
" the *Rupert.*
" Captain *Parry*, one of the Members, begged
" the Indulgence of the Court to re-examine
" a Witneſs : Which being granted, he ac-
" cordingly aſked him ſeveral Queſtions,
" that had been put to him before ; and
" found that he contradicted himſelf in
" many Particulars."

Captain *Parry* added ; I believe we all know who is meant : But, for the ſake of the Gentlemen, I will declare it is Mr. *Le Cras* whom I examined.

The Court did not think, they had any thing to do with what was publiſhed in the News-papers ; but ſaid, If the Gentleman's Character was injured, he ſhould puniſh the Printer of the Paper, or the Author of it.

Captain *Parry* obſerved (and deſired that a Minute might be made of it, which the Court allowed to be done, as his Obſervation) —That as he had examined him, he deſired to declare, That he never found a Witneſs more free from Inconſiſtencies, Prevarications, or Falſhoods ; nor had met with any one in the whole Courſe of the Examinations, who had given a more clear Account ; and that the Character of the Gentleman, of whom this had been publiſhed, ought to be cleared, as he is an Officer, a Man of Honour, and one who ſeems to intend to continue in the Service.

Then *Matthew Cole*, Maſter of the *Berwick*, was called in, and ſworn.

Priſoner. I intend only to examine him, with regard to a Converſation that paſſed between him and Lieutenant *Long* of the *Berwick.*

Priſoner aſked,

Q. I deſire you will declare to the Court, What Diſcourſe paſſed between you and Lieutenant *Long*, in relation to Lieutenant *Williams ?*

A. I think, it was laſt *Thurſday* Morning, or *Wedneſday*, I won't be ſure : It was one Day laſt Week, he and I were talking together, in relation to Lieutenant *Williams*'s altering his Journal ; and he aſked me, If I did not know, or hear any thing, of *Williams*'s altering his Journal ; I ſaid, No :—That is all that paſſed between Mr. *Long* and I ; I neither know, nor heard any thing, of his altering his Journal.—I remember very well, that he brought his Journal up to the Coach, and it was read before us all in the Meſs ; the Four Lieutenants, myſelf, the Surgeon, and Marine Officers ; I think they were all there ; I won't be poſitive.

Q. What time was that ?

A. I think, it was in the Month of *May* or *June* following the Action ; a little while before he left our Ship.

Q. What did he bring it to be read for ?

A. He brought it up to Mr. *Lloyd*, and read it, having been talked of in Converſation : I know of no other Reaſon for reading it ; and there were no particular Remarks made upon it.

Court to the Priſoner,

Have you any more Witneſſes ?

Priſoner. I had more ; but they all run away.

Court. You ſaid before, you had no more Witneſſes : What occaſioned their running away ?

Priſoner. Langton's being taken into Cuſtody has frightened them all away.

Court. No Witneſs, that intends to declare the Truth, has any Reaſon to be frightened.

Priſoner. I appeal to the Judge-Advocate, if he has not more Depoſitions.

The Judge-Advocate acquainted the Court, That he had one more Depoſition by him.

Priſoner. I believe the Court are no Strangers to the Methods that have been taken, and the Contrivances uſed by Mr. *Leſtock*, in procuring ſo many Witneſſes againſt me ; firſt ſending them to Mr. *Leſtock* ; then to Mr. *Coppinger* ; and then back to Mr. *Leſtock* again : Sixteen or Eighteen were examined together, and then ſent to the Proſecutors for the Crown, and the whole Fleet romaged for Witneſſes. If I had known of ſuch Methods being taken, and of ſo many Witneſſes being called againſt me, I would have brought Home my whole Ship's

Company, and alſo have inſiſted to romage the other Ships in the Fleet; and I don't doubt, but, in that caſe, I ſhould have found more in the Fleet to have contradicted the Witneſſes againſt me, than could have been found in Support of what thoſe Witneſſes have declared: I have no more Witneſſes to call, but ſubmit it to the Juſtice of the Court.

Mr. *Creſpigny*, one of the Proſecutors for the Crown, deſired, That Lieutenant *Long* might be called in, to give an Account of ſome Converſation that paſſed between him and Lieutenant *Williams*.

Lieutenant *Long* called in, and ſworn.

Two Queſtions, delivered in by the Proſecutors for the Crown, were asked, as follows:

Q. Had you any, and what, Converſation, and when, with Lieutenant *Williams*, touching the Alteration of his Journal? If yea, ſet forth the Particulars of ſuch Converſation.

A. 'Tis a long time agone, I can't pretend to ſet forth all the Particulars; I can't recollect or remember how the firſt Words came about; but, in ſpeaking about the Action, he produced his Journal: What we were ſpeaking about the Action, I can't ſay; I read Part of it, all that Day's, the Eleventh of *February*, 1743, the Day of Action; and I was ſurpriſed to ſee ſo much Firing in it; and I told him, that I believed, the *Rupert* did not do any Execution at all.

Q. What, ſhe was too far off?

A. She was a great Way from us, Ten or Eleven Ships from us; and I can't pretend to ſay, that I ſaw any thing of her; for we were in Action moſt Part of the time.—I aſked him, how he came to write all that in the Journal; and whether he was ſure of it: Upon which he anſwered, He wrote it, as the Captain had dictated it to him; and I can't recollect, ſo as to ſwear to any further Converſation that paſſed between us thereupon.

Q. Do you remember when this Converſation was?

A. I can't ſay juſt the Time this Converſation paſſed between us; but it was between *February*, 1743. and *June*, 1744. while he was my Brother-Officer in the *Berwick*.

Q. Is that all the Converſation?

A. It is all I can recollect.

Here one of the Members ſaid, I apprehend this Witneſs to be perjured. The Preſident replied, When Two Men ſwear contrary to each other, Which of them is perjured.

Q. Had you any, and what, Converſation, and when, with Lieutenant *Williams*, touching his giving Evidence on this Tryal? Declare to the Court what you remember of ſuch Converſation.

A. I don't know what Evidence he has given: What Converſation I had with him, was upon the Quarter-deck of this Ship: I remember, I was reading the Act againſt Perjury, at the Bulk-head of the Steerage, laſt *Monday* Morning; and he comes to me, and ſays, Old Meſs-mate, How do you do? I am glad to ſee you; or Words to that Effect: I told him, That I begged he would have no more to ſay to me; that his Character was ſlurred; and I could not bear to keep Company with a Man whoſe Character was ſlurred; or Words to that Purpoſe: Upon which I went from him to the Quarter-deck: And he came up after me, and declared he would keep me Company; and aſked my Advice: I told him, That the World ſaid, he had ſworn to falſe things: He ſaid, he believed there was ſomething in the Depoſition that was not Fact: Thoſe were the Words, as near as I can remember. I aſked him, If he was ſworn before the Court? He ſaid, No. I begged of him, for God's ſake, when he came before the Court, to ſtick to Facts; and I hoped God and the Court would forgive him, for what he had ſworn before, or done before (I can't remember the Words): Upon which I parted from him; and told him, he muſt not keep me Company, till he had cleared his Character; or Words to that Purpoſe. I remember no more that paſſed, on that Occaſion, between us.—I forgot to obſerve one thing, which I now recollect, That he clapped his Hand upon his Breaſt; and ſaid, He was damned: Which ſhocked me ſo, That I almoſt fell into Tears: But I can't tell, whether he ſaid this, when he ſaid there was ſomething in his Depoſition which was not Fact, or after: I begged of him, for God's ſake, when he came before the Court, to ſtick to Facts: This is all the Converſation we had then, that I know of.

The Witneſs then ſaid, If you pleaſe, I can bring Captain *Danſays* to appear for my Character, who bred me from a Boy; and Captain *Vincent*, with whom I was Lieutenant, and Captain *Hawke*, and Sir *Patrick Murray*, now upon the Spot, who was my Meſs-mate for Two Years; and is an Officer of Marines.—This I offer, becauſe I have heard it obſerved, That I was perjured.

The Member who had made that Obſervation, then ſaid, That he thought the Witneſs would appear to be perjured, becauſe he had denied to Lieutenant *Williams*, what he had ſworn to here.

The Witneſs replied, That, when he had denied to Lieutenant *Williams* his having ſworn againſt him, it was on *Tueſday* Morning laſt, before he had been ſworn before the Court; which was in the Afternoon of that Day.

The Court agreed, It was nothing like Perjury.

Priſoner aſked,

Q. What is your Chriſtian Name?

A. *William*.

A. William.

Q. Did you not know, That Lieutenant *Williams* and I had parted, upon ſome Difference that was between us?

A. I heard ſo.

Q. And did you imagine, at the time he told you, I dictated his writing his Journal to him, that he ſaid Truth; or that it was out of Malice?

A. I can't ſay; it is a good while agone: I can't tell what I thought of it then.

Q. Did you not think it odd, That a Captain ſhould dictate a Journal to a Lieutenant, whom he fell out with?

A. Yes; I did think ſo; and I believe I told him, That he ought to write his Journal himſelf, and to write nothing but Truth, and not be dictated to by any body.

Q. Who told you, That Lieutenant *Williams* was perjured, or had forſworn himſelf?

A. I can't ſay: I heard it on Shore from many Hands; but I don't recollect the Name of any one.

The Court objected to the Priſoner's aſking Queſtions of this kind, as not ſeeming to be material.

The Priſoner obſerved, That it ſhewed a Tampering with his Witneſſes, as this was before Lieutenant *Williams* had been ſworn in Court; and nobody could tell, whether he was forſworn, or not, as his Depoſition had only been taken before the Judge-Advocate, who, he believed, would not ſhew the Depoſition to any body.

The Judge-Advocate ſaid, He had never ſhewn the Depoſition to any body.

Court asked,

Q. Did you ſay any thing to *Williams* about the Depoſition?

A. Yes, I did; and he ſaid, There were ſome things in it that were not Truth.

Priſoner. They taxed him with Perjury, before he appeared in Court.

Court. This is only private Converſation.

Priſoner asked,

Q. You told the Court, your Ship was in Action moſt Part of the Time: Pray, How many Men had you killed?

A. Not one.—One died Eight Days after his Wounds.

Q. How many Men had you wounded?

A. Several; I believe Six or Seven.

Court asked,

Q. You ſay, you was in Action, and had never a Man killed: How long did you continue in Action?

A. We were in Action with Two Ships, dureing the Engagement: I believe we were engaged with the Firſt Ship, about Forty or Fifty Minutes; and with the Second, I believe, about Two Hours and an Half; which was the *Poder.*

Q. Do you think, you was ſmartly engaged?

A. Yes; we were very nearly engaged; very ſmartly: In my Opinion, we were within Two Ship's Length, to the beſt of my Remembrance: The Captain of the *Spaniſh* Man of War, the Captain of the *Poder*, ſaid, We diſmounted him Twelve Guns with One Broadſide.

Q. This is the Account of your own Ship, of what you did to him: Did he fire as many Broadſides as you?

A. Yes; I believe he fired as ſmartly at us, as we did at him, till his Main-maſt went away: Then his Main-yard came down upon the Gunnel, and the Yard-arm broke off, and the Sail covered the Ports; and then we tacked upon his Bow: But I can't give a Detail of the Action; for I was quartered upon the Gun-deck.

Court. Only anſwer to the Queſtions that are aſked you.

Q. I think you ſay, You had not a Man killed outright?

A. Not One.

Q. How many had you wounded?

A. I can't juſtly ſay: About Six or Seven.

Q. What Damage did they do to your Rigging and Maſts?

A. To the beſt of my Remembrance, we had Nine Main-ſhrouds ſhot; that is, Nine Shot had ſtruck the Shrouds, ſome of them being cut twice: This is to the beſt of my Remembrance.

Q. Do you remember any thing more?

A. Yes; the Running-rigging a vaſt deal ſhot, and ſome of the Fore-ſhrouds; our Maſts, Yards, and Studding-ſail-booms, I believe, not One but what was ſhot.

Q. Do you imagine, that the Enemy levelled their Guns chiefly at your Hull, or at the Maſts, Yards, and Rigging?

A. Their Intent I can't ſay; they did fire high, it was plain; which might be owing to our having the Weather-gage.

Q. Did they ſtrike your Hull much?

A. There were a great many Shot in her Hull; ſome were taken out; others ſtill remain in: I think, the Carpenter has told me, that Twenty are now remaining in her Hull.

Q. I think you ſay, You diſmounted Twelve Guns on board the *Spaniſh* Ship, with One Broadſide?

A. Yes; to the beſt of my Remembrance, I heard the Captain of the *Spaniſh* Man of War ſay, That we diſmounted him Twelve with One Broadſide; I believe he ſwore it; Captain *Hawke* can tell: I think he ſaid, There were Seventeen diſmounted in all, on board his Ship.

Q. What time of the Day were thoſe Guns diſmounted?

A. I believe it to be between Two and Five o'Clock.

Q. Did any of the Shot go through and through you?

A. Yes, many through, in at one Side, and out of the other.

Q. What Shot had you in your Maſts and Yards?

A. We

A. We took a Shot out of the Spritſail-yard, another out of the Mizen-maſt-Head, another out of the Mizen-topſail-yard: The Main-maſt had a Splinter taken out, as the Carpenter told me, Eight Inches Diameter: There were ſeveral Shot ſtruck through the Main-maſt, but none ſo materially as that.

Q. Did you obſerve when the Admiral wore, to go upon the other Tack?

A. No; I did not ſee him wear; I did not ſee any thing of him, till we put about, and were running towards him; for I was at my Quarters between Decks, till the *French* and *Spaniſh* Fleet came ſo near us, that Captain *Hawke* ſent for me up, to make Sail from the Enemy, and join Admiral *Mathews*.

Q. Did you ſee the Admiral then?

A. Yes.

Q. Had he the Signal for the Line then flying?

A. I can't ſay; I don't remember any thing of it; I believe it was becauſe I heard ſo.

Q. When you wore, Did you go to Windward, or to Leeward, of the *Marlborough?*

A. To Windward.

Q. Before the *Poder* loſt her Main-maſt, Was there any other Ship engaged her, beſides you?

A. I can't ſay; but, I believe, there was: She had loſt the Head of her Fore-topmaſt, before ſhe came our Length; and we bore down to engage her.

Q. You do believe other Ships engaged the *Poder*, beſides you?

A. Yes.

Q. Do you believe, any other Ships engaged her, at the time you engaged her?

A. I can't ſay; I was quartered between Decks; and the Smoke prevented my ſeeing much: I believe, at the Height of our Engaging, no other Ship fired at her, unleſs the *Kingſton* and *Bedford* might; though, I believe, at too great a Diſtance, and out of Shot.—I am not poſitive of this.

Q. Then the *Spaniſh* Ship might point ſome of her Guns at thoſe Ships, and take off Part of her Fire from you?

A. It might poſſibly be.

Q. You ſay, There were Twenty Shot lodged in your Ship's Side?

A. Yes; ſo the Carpenter told me.

Q. What kind of Shot were they?

A. Some Grape, and ſome Cannon Shot.

Q. Did you engage any other Ship but the *Poder?*

A. Before we engaged her, we did.—And I believe, we might fire at other Ships promiſcuouſly, as they were paſſing by us to-and-fro.

Then he withdrew.

Court to the Priſoner.

Have you any thing further to offer in your Defence?

Priſoner. Yes: If there is any Doubt of the Veracity of what Mr. *Lynch* has given in Evidence, and ſaid, with relation to the Damage I did the Enemy; there is a Gentleman here, who can anſwer to his Character, and to the Services he has faithfully done his Country.

Court. Let him be called.

Priſoner. Call Mr. *Barker:*—He was Commiſſary at *Toulon*.

Pentecoſt Barker, called in, and ſworn.

Court asked,

Q. Declare to the Court what you know of Mr. *Lynch*.

A. I was employed on Shore by Mr. *Mathews*, on Affairs of the Fleet; and Mr. *Lynch* was employed for ſecret Services there, in which he was always very faithful: He was firſt employed in the Month of *April* or *May*, 1743: He ſome times went on board the *Namur* ſecretly: Mr. *Mathews* always approved of him, and laid very great Streſs upon the Accounts he brought: He continued upon that Employment from that time till a little before the *French* and *Spaniſh* Fleets went from *Toulon*; and then he was very deſirous to get on board the Fleet: So I ſent him off in the *Engliſh* Packet-Boat (I think the Captain's Name was *Hill*) from *Marſeilles*; and by that means he got on board the *Namur*, and ſo was there on the Eleventh of *February:* I can ſay more of his Services, if that is neceſſary; and if it will be proper, to ſay what he did.

Q. As to Secrets, I don't deſire to know.—You are Purſer of the *Royal Oak*, a'n't you?

A. No, I was Purſer of the *Royal Oak*; but I am now Purſer of the *Barfleur*.—If the Court have any thing more to ask, relating to him, I am very willing to anſwer; I believe him to be a very faithful, honeſt Man: I believe the Accounts he picked up among the *French* and *Spaniſh* Officers were very juſt.

Q. Have you any Reaſon to diſtruſt his Veracity upon any Occaſion?

A. No, indeed, never.

Q. How did this Man come to Mr. *Mathews?*

A. I ſent him off in a Boat in the Bay of *Hieres:* He came to me, and ſaid, He was deſirous to ſee Mr. *Mathews*; ſo I ſent him off in a ſecret Manner.

Q. What was the Reaſon you ſent him off?

A. He came to me to *Hieres*, and ſaid, He believed he could be very uſeful to Mr. *Mathews:* So I ſent him off; and he was always employed afterwards.

Q. Had you no other Reaſon for ſending him off?

A. Yes; I had ſeen him before, and inquired of Matters of him; and had ſome Diſcourſe with him, about the *French* and *Spaniſh* Fleets; and, when he deſired to ſee Mr. *Mathews*, I ſent him off. He came back to *Marſeilles*, after the War was declared by the *French* againſt *England*; and, by ſome means or other, they found he had been on board the *Namur*; and, upon that, they made him a Priſoner, and put him into the Caſtle of *Saint Nicolas*, where he was many Months.

Q. He

Q. He declared here, he had been in the *Spaniſh* Service.

A. Yes; he was in the *Spaniſh* Service.

Q. Do you know in what Capacity he was, in that Service?

A. I was told, he was one of the Maſters on board one of their *Spaniſh* Men of War.

Q. Do you know how he came to leave the *Spaniſh* Service?

A. He left their Service to come into ours.

Q. I want to know the Reaſon why he left it.

A. I verily believe, it was becauſe he did not care to fight againſt his own Country.

Q. Did you ever hear him ſay, he left it for that Reaſon?

A. I can't ſwear to that; but I believe it was for that Reaſon; for I know he loſt all his Wages.

Q. How do you know that?

A. Becauſe I ſaw a Note from his Captain to that Purpoſe.

Q. Did you ever in Converſation hear him declare, how long he had been in the *Spaniſh* Service?

A. No, I have ſeen his Note, of what Money was due to him.

Q. Do you know what Religion he is of?

A. I have heard him ſay, that he is of the Church of *England*; that he is a Proteſtant.

Q. Do you believe him to be ſo?

A. I have no Reaſon to believe to the contrary: I have heard him ſay, He would take the firſt Opportunity to take the Oaths to King *George*.

One of the Proſecutors for the Crown delivered Two Queſtions into Court; which were asked, as follow:

Q. At what time did Mr. *Lynch* quit the *Spaniſh* Service, as you know, or have heard?

A. He quitted, I believe, a Fortnight or ſo before the Engagement; but I can't be certain of that: I know I got a Paſſage for him about that Time to the *Namur*, by means of —

Priſoner. I would not have you take Notice of their Names; for they may be all put into the *Baſtille* for it.

Q. Do you know, or have you heard, that Mr. *Lynch* has ſerved at Sea in the *Spaniſh* Service, ſince the War between *Great Britain* and *Spain*?

A. Yes; he did certainly belong to one of their Men of War: I think he was a Maſter, as I ſaid before.

Court asked,

Q. I think you ſay, He loſt his Wages, after he had deſerted the *Spaniſh* Service; and you ſaw it, under his Captain's Hand?

A. I did not ſay he deſerted the *Spaniſh* Service; I ſaid, he left the Service: He told the Captain, he had ſome Affairs to ſettle in *Ireland*, and begged he might go there; upon which he gave him a Diſcharge; and I have ſeen the Paper.

Q. Did you ſee his Diſcharge?

A. Yes; I ſaw it.

Q. What kind of a Paper is it?

A. A Paper in Print; a Sort of a Ticket, as one may call it, which ſets forth the Wages due to him.

Q. You ſaid, He had loſt his Wages.

A. Yes, to be ſure, his Wages muſt be loſt, unleſs he goes back again to *Spain*; which, I believe, he never intends to do: He has a Sort of a Ticket, to ſhew what Wages is due to him; but they are very badly paid; they ſell them at a vaſt Diſcount.

Q. How long did Mr. *Mathews* employ him?

A. He employed him from the Middle of *April*, or Beginning of *May*, 1743. till he was made a Priſoner.

Q. What time was that?

A. That was, I believe, about the Beginning or Middle of *May*, 1744.

Q. You ſay, He came to *Marſeilles*, as ſoon as the War was declared?

A. The very Day he arrived at *Marſeilles*, War was declared, and the Packet-Boat was ſeized.

Q. Where did he come from to *Marſeilles?*

A. From *Mahon*.

Q. Was he ſent by the Admiral?

A. He was ſent out of the *Namur*, by the Admiral, upon the ſame Affairs as before.

Q. I think you ſay, You ſaw a Paper, under the *Spaniſh* Captain's Hand, of a Diſcharge to *Lynch*: Do you know, that it was really the *Spaniſh* Captain's Hand?

A. No; that I can't ſwear; but, I believe, it was: It was in *Spaniſh*, a printed Paper, like a Ticket; and, I believe, it was ſigned by ſeveral of the *Spaniſh* Officers.

Q. Was he made a Priſoner from the time the Packet-boat was ſeized?

A. Yes; he was then made a Priſoner of War, as being ſeized in the Packet-boat; but he was not made a Priſoner for going on board the *Namur*, till ſome time afterwards.

Q. How does it appear to you, that he was made a Priſoner for going on board the *Namur*, after he was made a Priſoner of War?

A. I had an Account of it from a Gentleman at *Marſeilles*.

Q. Then you don't ſpeak of it to your own Knowlege?

A. No; I was then gone from thence to *Genoa*.

Q. You ſay, You ſaw a Paper ſigned by the Captain; but you can't ſwear it to be the Captain's Hand, but believe it to be ſo: Do you read, write, or underſtand *Spaniſh?*

A. No, not well: I could ſee there was his Name; and underſtand ſo far, as that he was on board the *Spaniſh* Ship, becauſe I underſtand a little *Latin*.—I could read the *Spaniſh* to underſtand it ſo far.

Q. You was not on board in the Engagement: Did you ever hear any thing of the *Rupert* hailing the *Royal Oak*, or the *Royal Oak* hailing the *Rupert?*

A. I have heard it in Converſation: I have heard, that Captain *Williams* hailed the *Rupert*; but I can't ſay, I know it.

Q. Have you heard, that the *Rupert* hailed the *Royal Oak?*

A. Yes; I have heard ſo, ſince I came to *England.*

Q. Did you hear it abroad?

A. I don't remember it.

Q. But you heard abroad, that the *Royal Oak* hailed the *Rupert?*

A. Yes, from the *Royal Oak*'s People.

Q. Upon your Oath, as a Man of Honour, Do you believe, that either of them hailed the other?

A. I can't ſay any thing to it.

Court. How can a Man that was not on board a Ship, ſay any thing to that?

Then the Priſoner deſired, That a Paper, containing his Defence, might be read by the Judge-Advocate; for that he himſelf was ſo full, that he was not able to read it. The Court agreed to his Requeſt; and it was read by the Judge-Advocate, as follows; *viz.*

SIR,

HAving obſerved, that all the Witneſſes againſt me have been examined, whether I could go and aſſiſt the *Marlborough*;

It makes it neceſſary for me to give ſome Anſwer to that Point. Therefore I muſt beg leave to take Notice of the Eleventh Article of War; which is as follows; *viz.*

XIth. Every Captain, Commander, and other Officer, Seaman or Soldier, of any Ship, Frigate, or Veſſel of War, ſhall duly obſerve the Commands of the Admiral, or other his ſuperior Commander of any Squadron; as well for the aſſailing or ſetting upon any Fleet, Squadron, or Ships of the Enemy, Pirate or Rebels; or joining Battle with them; or making Defence againſt them; as all other the Commands of the Admiral, or other his ſuperior Commander; upon Pain to ſuffer Death, or other Puniſhment; as the Quality of his Neglect or Offence ſhall deſerve.

And I muſt alſo beg Leave to take Notice of the XIIIth Article of the Fighting Inſtructions; which is as follows; *viz.*

XIIIth. As ſoon as the Admiral ſhall hoiſt a Red Flag, at the Flag-ſtaff, at the Foretopmaſt-head, and fire a Gun; every Ship in the Fleet is to uſe their utmoſt Endeavour to engage the Enemy, in the Order the Admiral has preſcribed to them.

To which Admiral *Mathews* has added this Inſtruction of his own; *viz.*

And ſtrictly to take care not to fire, before the Signal be given by the Admiral.

And alſo the XXIId and XXIIId Articles; which are as follows; *viz.*

XXIId. If any of the Ships in the Fleet are in Diſtreſs, and make the Signal, which is a Weſt with the Jack or Enſign, the next Ship to them is ſtrictly required to relieve them.

XXIIId. If the Admiral, or any Flag Ship, ſhould be in Diſtreſs, and make the uſual Signal, the Ships in the Fleet are to endeavour to get as cloſe up into the Line, between him and Enemy, as they can; having always an Eye to defend him, if the Enemy ſhould come to annoy him in that Condition.

The Station that was preſcribed to me, by the Admiral, was the Third Ship aſtern of the *Marlborough*; and if ſhe had been in Diſtreſs, and made the Signal with the Jack or Enſign, the *Dorſetſhire* and *Norfolk*, by the XXIId Article, were the Ships, and the only Ships, that ought to have relieved her; one being the next Ship ahead, and the other aſtern, of her: And this will be ſtill more evident, when it is conſidered, that the XXIIId Article ſays, That if the Flag ſhould be in Diſtreſs, and make the uſual Signal, the Ships in the Fleet are to get cloſe up into a Line, between him and the Enemy; which plainly ſhews the Diſtinction, that a Flag in Diſtreſs is to be aſſiſted by the whole Fleet; and that a private Ship is only to be aſſiſted by the next Ship to her: And therefore, though ſhe had made a Signal of Diſtreſs, I apprehend, it was not my Duty to leave my Station to go up to her; eſpecially, as there were Two Ships ahead, and Two aſtern, all nearer to her, than I was: And it may be proper to obſerve, that the Admiral ſent Orders to the *Dorſetſhire*, to go to the Aſſiſtance of the *Marlborough*, which ſhe did accordingly; and, if he had thought it neceſſary for any other Ship or Ships to do the like, he would, no doubt, have given his Orders for it; and I could not have done it, without breaking the XIIIth Article of the Fighting Inſtructions, by leaving the Station preſcribed by the Admiral in his Line of Battle.

The Admiral and *Marlborough* began to engage at One o'Clock; and, before Two, had beat down, cut, and tore to-pieces, the *Real*'s Yards, Rigging, and Sails; ſo that I thought, as every body elſe then did, that the *Real* and *Hercules* muſt have fallen in a very ſhort time; and if I had gone to them, inſtead of engaging the Two Headmoſt of the Five *Spaniards*, that were coming up aſtern, as I did; the whole Fleet would have juſtly ſaid, I acted like a Coward, by going out of my Station, where there were Four to Two, and have avoided the Enemy's Ships that were coming up to their Admiral unmoleſted: And they might have likewiſe ſaid, There were Five great Boys taking the Bread and Butter of a little one; as was ſaid by the late Lord *Torrington*, of a Captain in the Year 1718. which, I believe,

is ſtill freſh in the Minds of ſome of the Members of this Court.

I had no Notice of her being in Diſtreſs, till her Maſts fell, ſhe never making any Signal for that Purpoſe; and both before, at the Time, and after her Maſts fell, I was engaged with the Headmoſt of the Five *Spaniſh* Ships, which were coming up to the Aſſiſtance of their Admiral; which plainly ſhews, that, after I had any Notice of her Diſtreſs, it was out of my Power, if it had been my Duty, to go up to her Aſſiſtance.

As to the Fireſhip, I had not any Orders or Directions to cover her; and humbly apprehend, that it was in no wiſe my Duty to do it without; nor did I know any thing of her, till I ſaw her coming down; at which time I was engaged, as I have already ſaid, with the Headmoſt of the Five *Spaniſh* Ships, that were making towards her, with all the Sail they could croud: And, had I been directed to cover her, I could not have done it more effectually, than by continuing my Engagement with thoſe Ships, which, by that means, were prevented from getting near enough to her, for their Shot to reach her: And ſo ſhe had time ſufficient given her, in reſpect of thoſe Ships, for doing of her Buſineſs.

As I have been induced to think it neceſſary for me to ſay ſomething more than I have done, to the Third Article of the Charge exhibited againſt me, in what relates to my not cloſing the Line with the *Marlborough*, upon the Failure of the *Dorſetſhire* and *Eſſex* of falling into their reſpective Stations; and as this Charge ſtands founded upon the XXIVth Article of the Fighting Inſtructions; I muſt beg leave to recite that Article, Word for Word; in order to ſhew, that the Charge cannot be ſupported, either by the Letter, or by any natural Conſtruction, of the ſaid XXIVth Article: Which is this; *viz.*

> XXIVth. No Ship in the Fleet ſhall leave his Station, upon any Pretence whatſoever, till he has acquainted his Flag, or the next Flag-Officer to him, with the Condition of his Ship, and received his Directions therein; but, in caſe any Ship, ſhall ſo do, the next Ships are to cloſe up the Line: And, if any Commander ſhall be wanting in doing his Duty, his Flag, or the next Flag-Officer to him, is immediately to ſend for the ſaid Commander from his Ship, and appoint another in his room.

Now, Sir, I muſt beg leave humbly to inſiſt, that the ſaid Article, could only be intended, as an Inſtruction how Ships diſabled in Fight ſhould govern themſelves, with regard to *leaving their Stations after their being diſabled*; and what other Ships ſhould thereupon do, in order to cloſe up the Line in that Caſe; otherwiſe the Words, *Condition of the Ship*, would not have been mentioned: If this be a fair Conſtruction of the Meaning of the Article, as I humbly conclude it is; and there was not any Ship diſabled, between the *Rupert* and the *Marlborough*, as indiſputably there was not; then, Sir, it muſt neceſſarily follow, that I was in no wiſe obliged, by that Article, to cloſe the Line with the *Marlborough*; and conſequently, that it was not my Duty to have done it.

This Argument, Sir, I hope, will appear worthy of the Court's Attention; and, when duly conſidered, to be of Weight and Force enough with them, to acquit me of any Breach of the above-mentioned Twenty-fourth Article of the Fighting Inſtructions, which has been laid to my Charge. But, however, it may not be amiſs, for me to obſerve, and put the Matter beyond all Diſpute, that the *Dorſetſhire*, and *Eſſex*, were the Two Ships ſtationed between the *Rupert* and *Marlborough*; that the Admiral ſent Orders to the *Dorſetſhire*, to go to the Aſſiſtance of the *Marlborough*; and that he would, unqueſtionably, have done the ſame, with regard to the *Eſſex*, had he judged it right: And, if thoſe Captains had not done their Duty, he would have put the latter Part of the ſaid Article in Execution, and immediately ſent other Captains to command their Ships.

Had I broke my Line at firſt, and gone to the Aſſiſtance of the *Marlborough*, when ſhe wanted none; the *Namur*, and ſhe, engaged with the *Real*; and the *Dorſetſhire* and *Eſſex*, that Inſtant, engaged with the *Hercules*; ſhould I not deſerve to be brought to a Court-Martial, for ſuch Behaviour? As, I humbly conceive, it would be contrary to all Military Diſcipline, eſpecially when there was an Enemy ſo near, proper for me to engage with, according to my Station; the Headmoſt of which Ships I actually engaged, and forced to bear away from the *Marlborough* and Fireſhip; and, before the *Namur* had drawn off from the *Real* and *Marlborough*, I was got into the Track of the Five Ships of the Enemy, that were coming up to the Aſſiſtance of their Admiral; and the Headmoſt of them was firing at me.

What I have now ſaid, in regard to not leaving my Station, has been ſtrictly obſerved, by great and experienced Officers, in former times. For, at the Battle of *Malaga*, Sir *George Rook*, then Commander in Chief, and his Diviſion, was very hard preſſed: And tho' Sir *Cloudeſly Shovell* ſaw his Condition, judged it not adviſeable to leave his Station, without a Signal, or particular Orders, for that Purpoſe; but ſent Sir *John Norris*, then Captain of the *Orford*, his Second, in his Boat, to know, if the Admiral would give him Leave to go to his Aſſiſtance: But the Anſwer was, He muſt keep his Station: Which is a plain Indication, that no Ship can leave her Station, to go to the Aſſiſtance of another, without the proper Signal, or Orders, for that Purpoſe; tho' many Ships may, at that time, lie in their Stations, inactive. And my Caſe

Caſe is ſtill ſtronger than this: For I had neither Signal, nor Orders; and was engaged, myſelf.

If the Witneſſes, that I have produced to this Court, which are the Chief Officers, oldeſt and beſt Seamen in the Ship, are not ſufficient to make plainly appear a Captain's Conduct and Behaviour, when his Honour is called in Queſtion; where is the Captain, however brave, and innocent, who is not liable to be undone, when, thro' Pique, or Malice, or the hidden Views of his Enemies, he is loaded with Infamy, and called to an Account, in the Manner I have been?

Had I behaved in that ſcandalous manner, that I have been repreſented to this Honourable Court, moſt certainly, Vice-Admiral *Leſtock* is too penetrating an Officer, to let my Behaviour eſcape his Obſervation; and would, certainly, fire a Shot at the *Rupert*, to put me in mind of my Duty, the ſame time he did at the *Dunkirk* and *Cambridge*; and, without doubt, would have ſent a Letter of Complaint to Admiral *Mathews*, for ſuch a notorious Breach of my Duty, at the ſame time he did againſt Captains *Purvis* and *Drummond*. But, on the contrary, my Behaviour, that Day, was thought of ſo well, that, in a few Days after, I was ſent, with a Command of Sixteen Sail of his Majeſty's Ships, to *Villa Franca*, to aſſiſt the King of *Sardinia*, on the Enemy's attacking that Place. And I hope, without the leaſt Tincture of Vanity, I may aſſert, that, thro' my Vigilance, I ſaved his whole Army, by landing a Detachment of the Marines and Troops from on board of each Ship, and placing the Ships in ſuch a manner, that I ſecured the Paſſes, and covered the Retreat of his Army.

I acknowlege, my Services were no more than what my Duty exacted: But this Honourable Court will permit me to ſay, That they were ſuch, as his *Sardinian* Majeſty condeſcended to take Notice of, and admit they were for the publick Good—I received a Preſent from his Majeſty, worthy ſo great a Monarch: And, as a farther Proof of his being ſatisfied with my Conduct, he gave, even after my Diſgrace, poſitive Orders to his Miniſter at the *Britiſh* Court, to recommend me to the King my Maſter, as worthy both of Rewards and Favour: An Honour, of which I declined taking any Advantage, until my Conduct had been publickly, legally, and minutely, examined into; that my Enemies might have no Opportunity to tax me with any Endeavours to avoid a fair and open Tryal, by ſheltering myſelf under his *Sardinian* Majeſty's favourable Opinion.

I have had the Honour of Twenty-two different Commands, in the *Mediterranean*.

Firſt, from Admiral *Leſtock*; next, from Admiral *Mathews*; and, laſtly, from Admiral *Rowley*. I had not the Pleaſure of being known to any of thoſe Gentlemen, till I came under their Command; and have the Satisfaction to think, that my Conduct and Proceedings were always agreeable to them.

Admiral *Rowley* ſent me to command on the *Gibraltar* Station, with a Squadron of Ships, where I was abſent from him Six Months; and, on his judging proper to proceed to that Station himſelf, with the reſt of the Fleet, he detached me, with a ſtrong Squadron of his Majeſty's Ships, to command on the Coaſts of *Italy*, and *Riviere* of *Genoa*; where I had nothing more at Heart, than the Glory of my Maſter's Arms, and the Good of the common Cauſe; and, after a ſucceſsful Command of Three Months, was made a Priſoner, at the Head of that Command, the Firſt of *June*; kept, ſince, a cloſe Priſoner, and brought here an unhappy Spectacle, as you now ſee me.

As you, Sir, have been a Witneſs of my former Behaviour, having had the Honour to ſerve under your Command; my ſaying any thing farther to my Character, may be thought altogether unneceſſary: But, as I have more than Life at Stake, my Reputation; allow me to ſay, It is a ſenſible Pleaſure to me, that I can look back into my Conduct, and be able to averr, That, from the Time I had the Honour of his Majeſty's Firſt Commiſſion, till this Accuſation againſt me, I never had any Blemiſh upon my Character, or Reflection upon my Conduct. When I bore away for the Five Ships of the Enemy, the *Real* was ſo diſabled, that it was the Opinion of all my Officers, as well as myſelf, that, as ſure as there was a God in Heaven, ſhe would fall in Half an Hour. And I thought I could not do a more commendable Service, to my King and Country, than by the engaging thoſe Five Ships; and, if I had been well ſeconded by the Rear Diviſion, they muſt inevitably have fallen into our Hands.

It is a Misfortune to me, that I cannot be allowed the Benefit of the Teſtimony of my Admirals: But, on the other hand, it is my great Happineſs, that my Cauſe is before Gentlemen of your Juſtice, and Experience in Naval Affairs.

SIR,

A great Number of Witneſſes have been examined againſt me, and I cannot doubt but the Juſtice of the Court will thoroughly weigh the Evidence they have given, and determine accordingly, on its Validity; as I cannot, in the leaſt, doubt their Vigilance, having let nothing eſſential eſcape their Notice; and that their Judgment will make proper Diſtinctions and Obſervations.

To ſupport the Firſt Article, many have ſworn the *Rupert* out of the Line; and [*a*] One, in particular, ſwears her a Mile and Half to Windward of the *Namur*, which muſt have been Half a Mile to Windward of the *Winchelſea*.

[*a*] *Anth. Pinno*, of the *Namur*.

The Court, I am ſatisfied, in diſcuſſing the ſeveral Evidences given, will obſerve, That many of the Witneſſes were at a great Diſtance from the *Rupert*, even by their own Account; in which ſome Perſons, in one and the ſame Ship, differ [*b*]. And I beg Leave to obſerve, That ſome of the Witneſſes for the Crown have not only contradicted the Evidence given by others, but have been inconſiſtent with themſelves. One Gentleman [*c*] has told the Court, That he could not ſay any thing, in particular, of the *Rupert*; but, at the ſame time, informed them, That ſhe did not bear down, and was always to Windward of the *Namur* and *Marlborough*. Another ſays, The *Rupert* was not in a Line; yet acknowleges, He could not diſtinguiſh the *Rupert:* And gives, for Reaſon, That he was Three Miles diſtant. Theſe Two Gentlemen were in the ſame Ship. One [*d*] Witneſs has told this Court, That, Half an Hour after the *Marlborough*'s Maſts were gone, the *Rupert* was to Windward of the Line; yet allowed, at the ſame time, ſhe was rather within Point-blank of the Enemy. The Court will determine, how conſiſtent is this Evidence: For, if he admits the *Rupert* within Point-blank, yet to Windward of the Line; the Enemy muſt, alſo, have been conſiderably to Windward of their Line; which no one Witneſs has ever hinted. Another [*e*] Witneſs is poſitive, That the *Rupert* did not bear down; and places her to Leeward of the *Dorſetſhire:* But this ſame Gentleman neither knows what the *Rupert* was doing, nor at what Diſtance ſhe was from him.

In further Support of this Charge, there are Three particular Inſtances inſiſted upon, as Neglect of Duty in me, or as the Effects of my Puſilanimity.

The Firſt is, That I did not engage the *Hercules:* The Second, That I did not bear down to the Five ſternmoſt Ships of the Enemy: The Third, That I ſuffered thoſe Ships to paſs me.

As to the Firſt, of theſe ſuppoſed Facts; It is certain, Two [*f*] Witneſſes for the Crown have ſworn, That I might have engaged the *Hercules*. But I beg Leave to ſay, That theſe Gentlemen ſeem to be inconſiſtent, in their Evidence; as they admit, I muſt have paſſed the *Eſſex* and *Dorſetſhire*. But the Poſſibility of my engaging the *Hercules* is not only contradicted by other Witneſſes for the Crown, but even one of theſe very Gentlemen contradicts himſelf. For, in almoſt the ſame Breath, he has ſworn, That, if the *Rupert* had borne down, in a Line with the Admiral, there had been no Ships for her to engage: Which latter Teſtimony is corroborated by Nine [*g*] other Witneſſes, on the ſame Side; who all acknowlege, That the *Rupert* could not engage any Ship of the Enemy, till their Five ſternmoſt Ships came up. One [*h*] of theſe Witneſſes ſays, There was no Space for the *Rupert*, between the *Dorſetſhire* and *Hercules*; and another [*i*] is of Opinion, That, had the *Rupert* borne down into the Line, ſhe could not have reached the *Hercules*, but at random Shot.

To make good the Second particular Inſtance, of my keeping back, or withdrawing from the Fight; there are ſeveral, who have roundly charged me; amongſt which [*k*],

Some have ſtated the Time in which the *Rupert* might have had the Enemy abreaſt of her, ſuppoſing her to have borne down in a proper Line, and in her Station: One [*l*] of whom has ſworn, The Headmoſt of the Five *Spaniſh* Ships would have come up in Half an Hour, or Three-quarters of an Hour. If the *Rupert* had gone down into her Station, ſhe would have had the Headmoſt of the Five *Spaniſh* Ships within Point-blank; the *Rupert* might have been Three-quarters of an Hour going down, and then would have had a Ship to engage, in Half an Hour.

Another [*m*] ſays, again, That, if the *Rupert* had borne down, with the Admiral, and kept her Station, the Enemy would have been abreaſt of her, ſoon after Four o'Clock.

Our Admiral bore away, about Half an Hour paſt Twelve. The Headmoſt [*n*] of the Enemy's Ships could not be leſs diſtant, at that time, from the *Rupert*, if in her Station, than Four Miles. There was, then, but juſt Wind enough to command a Ship; beſides, there was a great Swell: Conſequently, in that time, the Enemy's Ships could not have run Four Miles. This Gentleman appears, to me, to be ſomething inconſiſtent in his Evidence; in one Part of which, he ſays, The *Rupert* might have bore down, and have had a Ship to engage, within Point-blank, in Three-quarters of an Hour; and, in another Part he ſhews, That, after ſhe had borne down, ſhe muſt have waited Half an Hour for a Ship to engage with. That theſe Two Witneſſes are contradictory to each other,

[*b*] Lieutenant *Kerney*, Four or Five Miles; *John Coultas*, *Romney*, Three or Four.
[*c*] Lieutenant *Bellamy*, *Torbay*, diſtant Three Miles.
[*d*] Captain *Knowler*.
[*e*] *John Baptiſta*.
[*f*] Lieutenant *Gore*, and Lieutenant *Peyton*.
[*g*] Gunner *Miller*, Mr. *Myers*, Captain *Tom*, —— *Stepney*, *Charles Stuart*, *Iſaac Chapman*, *Ben. Jenkins*, Captain *Gaſcoigne*, Lieutenant *Gore*.
[*h*] Mr. *Myers*.
[*i*] Captain *Gaſcoigne*.
[*k*] Lieutenant *Turner*.
[*l*] Lieutenant *Gore*.
[*m*] Maſter *Moore*.
[*n*] Lieutenant *Gore*.

is, in my Opinion, very apparent; as one brings the Enemy abreaſt of the *Rupert*, in Three-quarters of an Hour; and the other allows, at leaſt, Three Hours and an Half, for their getting up to her. It is, as I have already ſaid, well known, That our Admiral bore away about Half an Hour paſt Twelve; and this Gentleman ſays, That the Enemy would have been abreaſt of the *Rupert* ſoon after Four.

That it would have been imprudent for the *Rupert* to have gone nearer, than it has been proved ſhe did, I have the Teſtimony of Five [*a*] of the Crown's Witneſſes, who all agree, That the Five ſternmoſt Ships of the Enemy might have fetched, if not weathered, the *Rupert*; and [*b*] one of theſe is of Opinion, that ſuch an Attempt could have been of no Uſe to his Majeſty's Service; for he has told the Court, That neither the *Rupert* [*c*], nor the *Royal Oak* together, could have ſtopt theſe ſternmoſt Ships of the Enemy.

The Witneſſes for the Crown have left me very little to ſay upon the Third particular Inſtance brought to ſupport the Firſt Head of my Charge; which is, the Five *Spaniſh* Ships haveing paſſed the *Rupert*. One [*d*] of the Witneſſes to this Point, the Court has doubtleſs obſerved, retracted what he had firſt ſaid; to wit, That all the Five *Spaniſh* Ships had paſſed me. He afterwards reduced the Five to One or Two; and, laſtly, he could not be poſitive to any.—Another [*e*] does not directly ſay, That any paſſed me: His Evidence is, there might be One or Two: But, on the other hand, there are Seven Witneſſes on the Crown-Side, who are poſitive, that none of theſe Ships paſſed me; and one believes, they did not: Wherefore I reſt this Point upon their Evidence; and that which has been given in by the Witneſſes I have called for the Juſtification of my Conduct.

To ſupport the Second Head of my Charge, a great many Witneſſes have ſworn me out of Point-blank; and my Notes, if I have taken them juſtly (if not, the Court will rectify me, as my Judges I deem my Counſel), furniſh me but with one [*f*] Gentleman on the Crown-Side, who gave his Opinion, upon his Oath, That I was rather within Point-blank after the *Marlborough* had loſt her Maſts. [*g*] 'Tis true, another Gentleman ſwears, the *Rupert* was not within Point-blank: And a Third [*h*] Perſon ſwears, That the *Rupert* began to engage at Three Miles Diſtance. I mention this Difference of Opinion, to ſhew, how difficult it is to make a certain Judgment at even ſo ſmall a Diſtance as a Mile (for theſe Witneſſes were not farther off from the *Rupert*); though the Court muſt have obſerved, that ſeveral, who appeared for the Crown, have ſworn very poſitively, and very circumſtantially, at Diſtances from Two to Six or Seven Miles.

[*i*] One Gentleman cannot be poſitive, whether the *Rupert* was, or was not, within Point-blank. He, however, admits, thoſe Five *Spaniſh* Ships were crippled; but then he took care to inform the Court, that the *Cambridge* was alſo engaged with them, as well as the *Rupert* and *Royal Oak*.

[*k*] Another Gentleman ſwears to the Enemy's being out of Point-blank, when they fired upon the *Rupert*; yet admits, that their Shot made an Impreſſion in the Hull of the *Eſſex* at Half a Mile greater Diſtance.

[*l*] One Gentleman owns himſelf Three Miles diſtant from the *Britiſh* Ships aſtern; and believes none of the Four within a Diſtance to do Execution, as he ſaw their Shot fall into the Water.—At the ſame, a greater, and even at twice the Diſtance of Three Miles, other [*m*] Witneſſes could perceive the *Rupert* was not near enough to do Execution.

As the Court has, I obſerved, carefully taken Notes of every reſpective Evidence given, I will take up no more of your Time upon this Head, till I ſhall come to my own Witneſſes; but ſubmit what I have now obſerved to your Animadverſion: And I don't doubt, but you will, with great Equity, judge, whether or not it is probable, that Men, at ſuch different and great Diſtances, can poſitively determine upon the Poſition of a Ship, its Diſtance from another, and its being within or out of point-blank Shot. Gentlemen, at the neareſt Diſtance, have given their Sentiments on theſe Points with Diffidence.

I beg Leave, having gone through the Four Articles of my Charge, to ſay a Word or two with regard to the *Royal Oak* being always to Leeward of, and hailing the *Rupert* to aſſiſt her. Theſe Two Circumſtances were, in a manner, the only Defence that was made for the *Royal Oak*; and ſhe was to be cleared, by making a Victim of the *Rupert*. I do not in the leaſt doubt, but the Court has remarked, that Captain *Williams* himſelf, when upon his Tryal, did not (as I am informed) ſay one Syllable of his having hailed the *Rupert*; and that his Witneſſes could not fix the Time of this imaginary

[*a*] Captain *Nucella*, Lieutenant *Palliſſer*, Lieutenant *Peyton*, Lieutenant *Paterſon*, Maſter *Moor*.
[*b*] Lieutenant *Palliſſer*.
[*c*] Lieutenant *Palliſſer*.
[*d*] Captain *Nucella*.
[*e*] Lieutenant *Palliſſer*.
[*f*] Captain *Knowler*.
[*g*] Captain *Nucella*.
[*h*] *Anth. Pinno*.
[*i*] Captain *Stepney*.
[*k*] Lieutenant *Palliſſer*.
[*l*] Lieutenant *Wells*.
[*m*] *John Pope*, diſtant Four Miles; *John Fownes*, diſtant Five or Six Miles.

Hailing. The Witneſſes, who have appeared in Behalf of the *Rupert*, have proved the Circumſtance of my being in the Gallery impoſſible; and not one of the Men upon my Quarter-deck ever miſſed me, from the Beginning to the End of the Engagement. The Maſter, and ſeveral of my Witneſſes, have proved, That he hailed the *Royal Oak* by my Order; and that ſhe was then to Windward, and never to Leeward, of the *Rupert* that whole Day: That the *Royal Oak* got her Fore-tack on board, and run upon my Weather-Beam, has been proved by many; and my Firſt Lieutenant, at that time, run upon the Quarter-deck, and obſerved it to me, and others, as being a remarkable Circumſtance.—I find myſelf under an indiſpenſable Neceſſity of ſaying, though with great Reluctance, That the Court has been amuſed, not only in the above Particulars, but with a fictitious Account of the *Royal Oak* having engaged a ſingle Ship for the Space of an Hour. I would readily join Iſſue, and ſet my Life on this ſingle Point.

If any conſcientious Man in the whole Centre Diviſion, the *Royal Oak* excepted, will give his Oath, that he ſaw the *Royal Oak* engaged, as above, I will acknowlege, that I merit not only Death, but Infamy. None on board the *Rupert* ever ſaw her; not a Witneſs on Behalf of the Crown, from other Ships, who were examined to this Particular, knew a tittle of the *Royal Oak*'s engaging a ſingle Ship: And the Court, no doubt, obſerved, that not one of the *Royal Oak*'s Men could give an Account what became of her, after ſhe had been ſo engaged with the *Royal Oak*; notwithſtanding they were cloſely examined by the Preſident, and other Members of the Court. Theſe are ſtrong Circumſtances to confirm what I have now aſſerted, and the Witneſſes on my Behalf have ſworn, in Contradiction to this fabulous Account.

As a farther Proof, that the *Royal Oak* was to Windward of the *Rupert*, many Gentlemen of Character have informed you, upon their Oaths, That a Shot from the Enemy went over the *Rupert*, and cut the Stopper of her beſt Bower-Anchor on board the *Royal Oak*.

I beg Leave to ſpeak to ſome incidental Circumſtances, which ſeemingly make againſt me: One is, in regard to the few Men wounded, and none being killed, on board the *Rupert*. I hope, Sir, that a Mercy from Heaven will not be conſtrued to my Diſadvantage. Hiſtory furniſhes many Examples of Battles fought, both by Land and Sea, which mention Thouſands killed on the one Side, and very few on the Side of the Conqueror. I gave you, in Evidence of this Inequality, an Action with the *Vendome*; Captain *Hawke* with the *Poder*; Captain *Watſon* in the *Dragon*; Lord *George Graham* on the Coaſt of *Flanders*; and this has alſo been allowed to have been the Caſe of ſome of the Members of this Court.

Another Circumſtance is, The Accident of my Spritſail being fired by the Wadding of the *Eſſex*; whence, I apprehend, it may be inferred, that I muſt have been very near that Ship, when ſhe was at too great a Diſtance from the Enemy: But, if the Difference of Times is diſtinguiſhed, no ſuch Inference can be drawn; for the Firing my Spritſail happened when Admiral *Mathews* bore down to my Aſſiſtance, and to attack the *Real*, and the reſt of the Ships, the *Eſſex* then following him; and, on his hauling the Signal for the Line of Battle down, and the Signal for Engaging, and making the Signal for leaving off Chace, I hauled my Wind, to give room for the Admiral to paſs me; which brought me cloſe to the *Eſſex*; and, on her firing at the Enemy, as they opened aſtern of the Admiral, and at the very Time of my Wearing under the *Dorſetſhire*'s Stern, the Wad of one of her Guns flew into my Spritſail, and ſet it on Fire.

The Court has done the Honour to my Officers, to allow them Men of Credit: 'Tis a Character they juſtly deſerve; they have ever been eſteemed Gentlemen of great Probity; and I am, in myſelf, thoroughly ſatisfied, that they are incapable of any Action which could make them forfeit that Character.

Theſe Gentlemen, who have appeared in my Behalf, have not only proved my Impatience to engage the Enemy, but that I did all that was poſſible for me to get within a proper Diſtance; that I did not engage before I had, by Experiment, found I was near enough to do Execution, though the Enemy's Shot went over, and damaged the *Rupert*; and that, when I was once engaged, I never hauled off from the Enemy, but endeavoured ſtill to near them, till the Admiral called me off by his Signal, and afterwards led me off from the Engagement.

Nine of the Witneſſes for the Crown agree with thoſe who appeared for me, That I had no Enemy to engage, till the Five Ships aſtern came up; and they, by ſaying, the Enemy might have weathered, or fetched the *Rupert*, ſhew, that I engaged as near as I poſſibly could. That I was near enough to the Enemy to annoy them, is clear from the Damage the *Rupert* received, and the Men which you have heard ſhe killed, on board the Enemy's Two headmoſt Ships.

With relation to the Witneſſes, on my Behalf, I ſhall only add, that they have either flatly contradicted all that is contained in the Charge the Crown has brought againſt me, or ſhewn the Impoſſibility of my having been able to do, according to Diſcipline, what my not doing has been called a Neglect of Duty, and Infringement of his Majeſty's Fighting Inſtructions; and that theſe Witneſſes have not only been conſiſtent with themſelves, but one with another: And I am ſure none will ſay, the Court has not taken indefatigable Pains to ſift out the

Truth, that they might be enabled to do Juſtice between the King and the Subject; whereas on the other hand, on the Side of the Crown, ſome of the Witneſſes have not only been inconſiſtent in their reſpective Evidence, but have flatly contradicted one another.

It has been ſaid, I did not fight at all; and again, That I fought all Day:— That I was, and was not, in point-blank Shot; nay, that I was Three Miles off: — That I might have driven the Enemy out of the Line, had I borne down with the Admiral; but, if I had ſo done, I ſhould have had no Enemy to engage with:— That I could have ſtopped the Five *Spaniſh* Ships aſtern; but that the *Rupert*, and another Ship of greater Force to aſſiſt me, would not together have been ſufficient to have ſtopped them:— That I could have engaged the *Hercules*, and there was no Space for the *Rupert* between that Ship of the Enemy's and the *Dorſetſhire*; and if I had borne down in the Line, I could not have reached the *Hercules* but at random Shot:—That I could have borne down to have the Enemy abreaſt in Three-quarters of an Hour; but it would have been Three Hours and Half before the Enemy could have come up with the *Rupert*:— That I was, and was not, near enough the Enemy to do Execution:—That I ſprang my Luff, and hauled off from the Enemy; and that I continued Firing upon them, till they bore away out of Gun-ſhot:— That I did, and did not, engage the ſternmoſt Ships of the Enemy:— That I might have gone nearer to the Enemy; but, if I had, they would have ſhut me out:— That I ſuffered, and did not ſuffer, the Enemy's Ships to paſs me.

The Court will, by their own Notes, be ſatisfied I have exaggerated nothing in the ſumming up this contradictory Evidence: That I have adhered ſtrictly to the Truth, and have advanced nothing but what was given in Evidence on the Crown-ſide.

Your own Notes will give you this farther Information, That there have been examined againſt me Fifty-four Witneſſes, Twenty-eight of which were from the *Neptune*, *Torbay*, *Oxford*, *Ruſſel*, *Buckingham*, and *Romney*; which were from Four to Seven Miles diſtant from me; and Sixteen were from the *Namur*, *Marlborough*, *Eſſex*, *Somerſet*, and *Norfolk*; which, when I was engaged, were all at a great Diſtance from me; and the reſt were, one from the Fireſhip, and one from the *Dorſetſhire*, which knew but little of me; and one from the *Cambridge*, which ſeemed to contradict every-body; and one from the *Winchelſea*, which ſpoke very uncertain; and the other Six were all from the *Royal Oak*.

I ſhall tax none of them with Malevolence, and premeditated Deſign to make me appear guilty: Many Months have elapſed ſince that fatal Day of the Engagement, and Gentlemens Memory may have failed them: I hope, and will believe, that none who has appeared againſt me could be wicked enough to come here with prepenſed Murder in his Heart: And I have the Charity to attribute theſe Contradictions to the Difference of Judgment, in which every Man may be right in his own Opinion and Conſcience; but, where theſe are diametrically oppoſite, they cannot be both true in fact: Truth has but one Story; and it is remarkable, that the Witneſſes for the *Rupert* agreed in every thing eſſential.

Having done with the Obſervations, which ſeemed neceſſary for me to make upon the Evidence before the Court, and relative to my Caſe; I will, Sir, only beg ſo much more of your Time, as may ſerve to cloſe my Defence; by aſſuring you, That, as I have looked with great Satisfaction upon the Trouble which ſome Members of this Honourable Court have been pleaſed to give themſelves in the Courſe of my Tryal, by taking of Notes of the Evidence for the Crown, and for myſelf; and that, as I am fully perſuaded the whole Court will conſpire to the diſtinguiſhing and ſeparating the direct, clear, and well-ſupported Parts of that Evidence, from thoſe which are either doubtful, ambiguous, or contradictory in themſelves; ſo I promiſe myſelf, that the Matters in Queſtion between the Crown and me will then receive a well-founded, juſt and equitable Determination; or, in other Words, Such as will be ſuitable to that Candour, that Impartiality, that Honour, that Dignity, which ever ought, and which, I hope, ever will attend the Proceedings of a *Britiſh* Naval Court-Martial.

Then the Priſoner was ordered to be removed: And the Audience withdrew.

The Court proceeded to take into Conſideration the Evidence given upon this Tryal: And, after deliberating ſome time thereupon, they agreed to the following Queſtion being put: Which was done accordingly; *viz.*

Is it the Opinion of the Court, That the *Rupert* was in a Line with the *Namur* and *Marlborough*, when ſhe firſt brought up, after the *Namur* and *Marlborough* began to engage?

And the Court agreed unanimouſly, That ſhe was not.

Then the Court adjourned till To-morrow Morning, at Half paſt Eight o'Clock.

Tueſday, the 5th *November*, 1745.

THE Court met, according to Adjournment; the ſame Members, being preſent as were Yeſterday.

The Minutes of Yeſterday were read.

Then the Court proceeded to the further Conſideration of the Evidence: And, in the Courſe

Courſe of their Deliberations thereupon, the following Queſtions were agreed to, and put; *viz.*

Is it the Opinion of the Court, That the *Rupert* was in the Line, or as far to Leeward, as where the *Namur* and *Marlborough* firſt began to engage, during any Part of the Engagement, while the Fleet was on the Larboard-tack?

The Court agreed (Fourteen to Seven), That ſhe was.

Is it the Opinion of the Court, That the *Rupert* was in the Line, or as far to Leeward, as where the *Namur* and *Marlborough* firſt began to engage, during the greateſt Part of the time ſhe was engaged on the Larboard-tack?

The Court agreed (Eleven to Ten), That ſhe was in the Line during the greateſt Part of the time ſhe was engaged on the Larboard-tack.

Is it the Opinion of the Court, That the *Rupert* was above the Diſtance of point-blank Shot from the Enemy, during all, or the greateſt Part, of the Time ſhe was engaged on the Larboard-tack?

The Court agreed (Thirteen to Eight; thoſe Eight agreed ſhe was out of Point-blank the greateſt Part of the Time), That ſhe was above the Diſtance of point-blank Shot from the Enemy, during all the time ſhe was engaged on the Larboard-tack.

Is it the Opinion of the Court, That the *Rupert* was within a Diſtance to do proper Execution, during any Part of the Time ſhe was engaged on the Larboard-tack?

The Court agreed (Fourteen to Seven), That ſhe was not.

Is it the Opinion of the Court, That Captain *Ambroſe* had it in his Power to have engaged cloſer upon the Larboard-tack, with the Five Ships of the Enemy coming up, without going to Leeward of the Line.

The Court agreed (Eleven to Ten), That he had.

Is it the Opinion of the Court, That Captain *Ambroſe*, when he ſaw the *Dorſetſhire* and *Eſſex* bring up, and engage to Windward of the Line, ought to have ſhot ahead, and cloſed with the *Marlborough*?

The Court agreed (Fourteen to Seven), That he ought not.

When the *Marlborough* loſt her Maſts, and Captain *Ambroſe* ſaw the *Dorſetſhire* and *Eſſex* continue to Windward of the Line; Is it the Opinion of the Court, That the *Rupert*, engaged as ſhe then was, with the Headmoſt of the Five *Spaniſh* Ships coming up, ought to have ſhot ahead to cloſe with and aſſiſt the *Marlborough*?

The Court agreed (Fourteen to Seven), That ſhe ought not.

Is it the Opinion of the Court, That Captain *Ambroſe* ought to have covered, or conducted the Fireſhip, without Orders by Signal, or otherwiſe, from the Admiral?

The Court unanimouſly agreed, That he ought not.

Then the Court adjourned till To-morrow Morning, at Half paſt Eight o'Clock.

Wedneſday, the 6th *November*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, as were Yeſterday.

The Minutes of the Two laſt Days were read.

Then the Court proceeded to a farther Conſideration of the Evidence: And the following Queſtion was propoſed; *viz.*

Is it the Opinion of the Court, That Captain *Ambroſe*, during all the time of his engaging on the Larboard-tack, did engage as cloſe as he could, and ought to have done, without being to Leeward of the Line, or where the Admiral or *Marlborough* firſt brought up to engage?

Which being objected to; the previous Queſtion was put, Whether the propoſed Queſtion ſhould be put: And it was agreed (Thirteen to Eight), That it ſhould not.

Then the following Queſtion was propoſed; *viz.*

Is it the Opinion of the Court, That if the *Rupert* had cloſed the Line to her due Diſtance and Station, which was the Third Ship aſtern of the *Marlborough* in the Line of Battle, that ſhe would have been able to have annoyed the *Hercules*, who paſſed the *Marlborough* upon her Quarter, inſtead of lying inactive during the Space of Two Hours, which ſhe did, waiting for the Four *Spaniſh* Ships coming up?

Which was objected to; and the previous Queſtion put, Whether the laſt propoſed Queſtion ſhould be put? And the Court agreed (Thirteen to Eight), That it ſhould not.

The following Queſtion, being propoſed, and agreed to, was put accordingly; *viz.*

Is it the Opinion of the Court, That Captain *Ambroſe* did his utmoſt to come into the Fight, to engage, take, fire, kill, and endamage his Majeſty's Enemies, agreeable to the General Fighting Inſtructions, and Diſcipline of the Navy; and, conſidering his Situation, from the time the Admiral and *Marlborough* firſt brought up in a Line to engage, till the time the Admiral wore in the Evening, ſuitable to the Honour of his Majeſty's Flag, and becoming a Captain of a *Britiſh* Man of War?

The Court unanimouſly agreed, That he did not do his utmoſt.

The Court then proceeded to conſider, under what Article of the Act of Thirteenth *Charles* the Second Captain *Ambroſe* fell; and they unanimouſly agreed, That he fell under Part of the Twelfth Article.

Then the following Queſtions were put, with regard to the Puniſhment to be inflicted upon him.

Does he deſerve Death?
No, unanimouſly.

Does he deſerve Impriſonment?
No (Fifteen to Six).

Does he deſerve to be caſhiered, and rendered incapable of ever ſerving again in the Navy?
No (Thirteen to Eight).

Does he deſerve to be caſhiered from ſerving in his Majeſty's Navy, during his Majeſty's Pleaſure?
Yes, unanimouſly.

Does he deſerve to be mulcted?
Yes (Thirteen to Eight).
What Mulct does he deſerve to be inflicted upon him?
One Year's perſonal Pay in the *Rupert*.
Two were for mulcting him all his Pay in the *Rupert*.
Two were for mulcting him Two Years Pay.
Eleven for One Year's Pay.
Six for Six Months Pay.

Then the Court adjourned till To-morrow Morning, at Seven o'Clock.

Thurſday, the 7th *November*, 1745.

THE Court met, according to Adjournment; the ſame Members being preſent, as were Yeſterday.

The Court proceeded to conſider the Draught of a Sentence upon Captain *Ambroſe*: And ſome Debates ariſing, as to the Manner in which it ſhould be worded; the following Queſtion was propoſed, agreed to, and put; *viz.*

Is it the Opinion of the Court, that the Words, *But in regard he has, both before and ſince the Action, borne the Character of a diligent and vigilant Officer; and that his Failure in the Action ſeems to have ariſen from a Miſtake in Judgment; and that he has already ſuffered Confinement for a conſiderable time*, ſhall be inſerted in the Sentence, immediately preceding the adjudging Part of it?

And the Court agreed (Thirteen to Eight), That they ſhould be inſerted.

Then the Sentence being drawn up accordingly, and approved, and ſigned by the Court, the Priſoner was brought in, and the Audience admitted: And then the Judge-Advocate, by Direction of the Preſident, pronounced the Sentence, as follows; *viz.*

At a Court-Martial, aſſembled on board his Majeſty's Ship the *London*, at *Chatham*, on the 23d *September*, 1745, and continued to be held, by Adjournment, on the 18th, 21ſt, 22d, 23d, 24th, 25th, 28th, 29th, and 31ſt *October*, and 1ſt, 4th, 5th, 6th, and 7th *November*, 1745.

PRESENT

Sir *Chaloner Ogle*, Admiral of the Blue, and Commander in Chief of his Majeſty's Ships in the Rivers of *Thames* and *Medway*, and at the *Buoy of the Nore*, } Preſident;

Perry Mayne, Eſq; Rear-Admiral of the *Blue*,
Capt. *William Parry*,
James Rentone,
Thomas Limeburner,
Sir *William Hewett*,
Sheldrake Laton,
Sir *Charles Molloy*,
Robert Erſkine,
Charles Catford,
Hon. *Arch. Stuart*,
Thomas Smith, Eſq;
Capt. *William Chambers*,
Robert Allen,
Thomas Frankland,
Charles Colby,
Joſeph Hamar,
Smith Callis,
John Pittman,
Edward Spragge,
John Orme;

All duly ſworn, according to Act of Parliament;

THE Court (in purſuance of an Order from the Right Honourable the Lords of the Admiralty, to Sir *Chaloner Ogle*, dated 11th *September*, 1745). proceeded to inquire into the Conduct of Captain *John Ambroſe*; who commanded his Majeſty's Ship the *Rupert*, at the Time of the late Engagement, between his Majeſty's Fleet, and the Combined Fleets of *France* and *Spain*, off *Toulon*; and he was tried for the ſame, upon a Charge prepared againſt him by the Proſecutors in Behalf of the Crown, and laid before the Court by the Judge-Advocate: And the Court having ſtrictly examined all the Witneſſes produced, as well in Support of the Charge, as in the Behalf of the Party accuſed; and having thoroughly conſidered their Evidence, it appeared to the Court thereby,

That quickly after the *Namur* and *Marlborough* bore ſhort down upon the *Real*, the *Rupert* bore away alſo, and continued to bear down for a little time, after the *Namur* and *Marlborough* had brought up, and began to engage; and the *Rupert* alſo brought up: That, when ſhe ſo brought up, there was not any Ship of the Enemy abreaſt of her, there being a large Opening between the *Hercules* (the *Real*'s Second aſtern), and Five other *Spaniſh* Ships, that were coming up.

That ſhe afterwards bore down nearer to the Enemy's Line; and, a ſhort time before the *Marlborough*'s Maſts fell, began to engage the Headmoſt of the Five *Spaniſh* Ships coming up; and continued to engage her, and the Second of thoſe Ships, till after the *Namur* wore; and then the *Rupert* hauled off, paſſed to Leeward of the *Marlborough* (which was then towing away), and wore round the next Ship aſtern of the *Dorſetſhire* (which was then the next

Ship aſtern of the *Namur)*; and fired at the Enemy, in paſſing them on the contrary Tack.

That, when the *Rupert* firſt brought up, ſhe was not in a Line with the *Namur* and *Marlborough*; but that ſhe was in a Line, or as far to Leeward, as where theſe Two Ships began to engage: During the greateſt Part of the Time, ſhe was engaged on the Larboard-tack, though not within Point-blank Shot, nor within a Diſtance to do proper Execution, during any Part of the Time ſhe was engaged on that Tack.

And the Court are of Opinion, upon the whole, that Captain *Ambroſe* had it in his Power to have engaged cloſer, (upon the Larboard-tack) with the Five Ships of the Enemy coming up, without going to Leeward of the Line; and are alſo unanimouſly of Opinion, that he did not do his utmoſt to come into the Fight, to engage, take, fire, kill, and endamage, his Majeſty's Enemies, (agreeable to the general Fighting Inſtructions and Diſcipline of the Navy, and conſidering his Situation) from the time the Admiral and *Marlborough* firſt brought up in a Line to engage, till the time the Admiral wore in the Evening, ſuitable to the Honour of his Majeſty's Flag, and becoming the Captain of a *Britiſh* Man of War; and that he therein failed in his Duty, and is guilty of Part of the Charge againſt him: But, as to his not going to the Aſſiſtance and Relief of the *Marlborough*, and not covering or conducting the Fireſhip, the Court are of Opinion, that he ought not to have ſhot ahead, to cloſe with the *Marlborough*, either before or after her Maſts were gone; nor to have covered or conducted the Fireſhip, without Orders, by Signal, or otherwiſe, from the Admiral.

For his Failure in his Duty, as aforementioned, the Court do unanimouſly agree, that Captain *Ambroſe* falls under Part of the Twelfth Article of an Act, of 13th *Charles* IId, for eſtabliſhing Articles and Orders, for the Regulating and better Government of his Majeſty's Navies, Ships of War, and Forces by Sea: But, in regard he has, both before and ſince the Action, borne the Character of a vigilant and diligent Officer; and that his Failure in the Action ſeems to have ariſen from a Miſtake in Judgment; and that he has already ſuffered Confinement for a conſiderable time; the Court do only adjudge him the ſaid Captain *John Ambroſe* to be caſhiered from ſerving in the Royal Navy during his Majeſty's Pleaſure; and to be mulcted One Year's perſonal Pay for the *Rupert*: And he is hereby accordingly adjudged to be caſhiered from ſerving in the Royal Navy, during his Majeſty's Pleaſure, and to be mulcted One Year's perſonal Pay for the *Rupert*, to be applied to the Uſe of the Cheſt at *Chatham*.

C. Mollov,
Smith Callis,
R. Erskine,
J. Pittman,
Char. Catford,
E. Spragge,
Arch. Stuart,
John Orme.
C. Ogle,
P. Mayne,
Thomas Smith,
Wm. Parry,
Wm. Chambers,
Ja. Rentone,
Rob. Allen,
Tho. Limeburner,
Tho. Frankland,
Wm. Hewett,
Cha. Colby,
Sheldrake Laton,
Joſ. Hamar,

Cha. Fearne, Ju. Ad.

Then the Marſhal was ordered to diſcharge the Priſoner out of his Cuſtody.

The Court adjourned, To meet on board his Majeſty's Ship the Prince of Orange, *at* Deptford; *when ſome Tryals, to come on at a Court-Martial, to be held by Rear-Admiral* Mayne, *ſhould be over.*

PM
MVSEVM
BRITANNICVM